

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING THURSDAY, SEPTEMBER 11, 1997

Chairman Ludwig called the meeting to order at 1:30 p.m. at the Holiday Inn, SeaTac, Washington.

MEMBERS PRESENT: CURTIS LUDWIG, Chairman; LIZ McLAUGHLIN, Vice Chair; MARSHALL FORREST and PATRICIA L. HERBOLD; and Ex Officio Members SENATOR MARGARITA PRENTICE, SENATOR RAY SCHOW and REPRESENTATIVE RUTH FISHER

OTHERS PRESENT: FRANK MILLER, Director;
BEN BISHOP, Deputy Director;
CARRIE TELLEFSON, Special Assistant, Public Affairs;
SHERRI WINSLOW, Assistant Director, Field Operations;
JACKI FISCHER, Program Manager, Financial Investigations;
VICKI CHITTICK, Special Agent, Financial Investigations;
SUSAN GREEN, Executive Assistant.

Chairman Ludwig introduced the Washington State Gambling Commission (WSGC) staff and Commission members present. He said there will be no executive sessions another change to the printed agenda is that representatives from the Council on Problem Gambling will be speaking first.

PROBLEM GAMBLING COUNCIL

Gary Hansen, Washington State Council on Problem Gambling, said that the Council wants to honor Director Frank Miller for his long-term involvement. He said he did not know all that the director had done before Mr. Hansen came to the Council; however, he did know that Director Miller's support had been instrumental in the growth of the Council and also in increasing awareness throughout the state on the issue. He said Director Miller had personally taken steps to increase the Council's support in the Legislature and within the industry and that he had done some work at the national level, particularly the gaming regulators in Vancouver, Canada. He said Director Miller's involvement in this issue has been instrumental in everything the Council has done. He said that Dr. Maurer would like to present him with a plaque, which they don't do very often, but when they do, it is of special significance.

Dr. Charles Maurer, WSCPG, presented Director Miller with a plaque. He said that, on behalf of the Washington State Council on Problem Gambling and the citizens of the state of Washington, he wished to thank Director Miller for his direct influence through leadership and commitment to policy changes. He said the plaque was a distinguished recognition award for Director Miller's early awareness of the importance of addressing problem gambling, for his advocacy of state and industry policies on problem gambling, for his continuing leadership and support on the issue and with great respect and deep gratitude on behalf of problem gamblers and their families and the board of directors and staff of the Washington State Council on Problem Gambling. **Director Miller** thanked him for the honor.

LICENSE APPROVALS

NEW LICENSES, CHANGES, WITHDRAWALS AND TRIBAL CERTIFICATIONS

Chairman Ludwig asked if, when person applies for a license, they get to begin working before the Commission certifies them. **Mr. Bishop** said if there are no adverse findings on a completed application, the applicant receives temporary approval and may have been working for three to four months prior to their coming to the Commission formally.

Chairman Ludwig said that even though the Lummi casino is now closed, would it still be in the applicant's

interest to be certified so they could maybe get a job with another tribal casino. **Mr. Bishop** said yes, that was correct and that the applications received and that the staff had not acted upon were refunded their money. **Director Miller** said that under the compacts, each tribal government has to license their individual as well, so the state's certification is transferable. The tribal license is individual to each tribe.

Chairman Ludwig asked if these employees that are listed under Lummi, if they can obtain a job, can they just transfer the certification for a fee? **Director Miller** said yes, but they would be licensed by the tribe individually as well – it is a dual process. **Chairman Ludwig** asked if they would then come up later on Commission agendas as a change. **Director Miller** said that would not necessarily be the case.

Commissioner McLaughlin moved that the Commission approve the new licenses, changes, withdrawals, and tribal certifications. **Commissioner Herbold** seconded the motion. *Vote taken; motion carried with four aye votes.*

REVIEW OF FRIDAY'S AGENDA

Carrie Tellefson said tomorrow there will be no staff reports. There are nine rules up for final action tomorrow, including six in the manufacturer and distributor credit pricing package that have been up for discussion for the past few months. There is one rule on the carry over pull tab jackpot process, and Julie Mass, special agent, is available to give an overview on the carry over pull tab system. There are a couple of rules that are just housekeeping bingo rules up for final action as well. For discussion there are ten rules that are gambling service supplier rules, and again the house banked card game pilot test and accompanying rules. For discussion and possible filing, there are two petitions, one is a petition to amend the raffle rules to allow, for example, the ability to sell five tickets for four dollars a discounted ticket system and a petition by Dennis Zaborac to amend the punch board and pull tab rules that would delete the 50 percent markup on merchandise prizes. There are some license fee increase rules proposed for discussion and possible filing that Deputy Director Bishop will now explain.

Mr. Bishop said the staff would probably be requesting that these be filed for further discussion. The fee increases were a part of the agency budget that was presented to the Commission eight or nine months ago and the Commission approved a fee increase to begin in January. At that time, they were basing their financial condition and the condition of gambling on information that was available in 1995. Based on a trend line, they had projected that they would have a one percent decline in the gross receipts from punch board and pull tabs and approximately a two percent decline in bingo. The bingo was close so the fees during the period that just ended June 30 were within \$3,000 of the staff's projection so they would not be changing that. Conversely, punch board and pull tabs were off about \$14 million. They had a rebound; they came back from a projected one percent decline to about a one and a half to two percent increase. That had a large impact on the agency's income. Therefore, they will be proposing to file the fee increases, but as the agency gets further into the process, staff will probably go to the Commission with a recommendation that the increase not be implemented until June 30 instead of January 1. That, in effect, gives the licensees a six-month window and still keeps the agency from getting trapped under I-601. The charts they have before them explain that.

Commissioner Herbold asked about the exclusivity rules and why they are not in the packet. **Ms. Tellefson** said it was not on the agenda and it is a separate rule. The provision exists as part of the manufacturer and distributor credit pricing package. Deputy Director Bishop and she have discussed it and the management team has debated the issue. They have had further discussions with individual commissioners about making another modification to that provision even as it exists in their packet now. The issue is whether there should be an exception to the prohibition on exclusive contracts. There is a very broad exception set forth in that packet and perhaps some modifications are necessary but it does exist in their packets. **Commissioner Herbold** asked if it was built into one of the rules in the manufacturer and distributor set of rules. **Ms. Tellefson** said yes.

QUALIFICATION REVIEWS

AMVETS POST NO. 1, Tacoma

Ms. Vicki Chittick, Special Agent with the Financial Investigations Unit, said she was informed that there would be no representatives present at this meeting today from this group. The organization was formed in 1946 and was licensed in 1974. It currently has 1,626 active members. The organization's purpose is to assist the rehabilitation of veterans through education, employment and counseling. Their programs include assisting veterans in the processing of claims for benefits, pensions, and other entitlements. In addition to these programs, the organization provides donated services and items to help other community service organizations. In terms of compliance analysis, they satisfied the combined income percentage requirement for a Class "I" bingo by achieving a 17.2 percent net return. Also, the organization was in compliance with program expenditure requirements and its supporting services were less than 35 percent of its total functional expenses. The staff recommends the organization be approved as a patriotic organization and authorized to conduct gambling activities in the state of Washington.

Commissioner McLaughlin asked what had happened in 1997 to make it so much less than in 1995 when the bingo net income was almost \$80,000 more. **Ms. Chittick** said that the organization's net income decreased by \$68,000 and their pull tab income increased. The reason their bingo decreased so much was because of lack of attendance, and they are working on that. Their pull tabs have gone up since their lounge is still drawing people and that is where the majority of the pull tab gambling is taking place. **Commissioner McLaughlin** asked if attendance was still down. **Ms. Chittick** said she did not have the attendance information with her.

Commissioner Herbold asked if the decline had anything to do with tribal gaming in the area. **Ms. Chittick** said she was sure that had something to do with it because the location of the Puyallup gambling activities is so close. What the experience has been is that the activity drops off initially and then slowly builds back. She said they would have to wait and see through 1997 if that is really what was taking place.

Chairman Ludwig said he thought that the Puyallup Tribe had always had a large bingo facility right on I-5.

Ms. Chittick said there are several tribal bingo facilities in the area and she assumed is that some of the disposable dollars have traveled to the casino because of the newness and will eventually either stay that way or level out. After a period time has passed, they will be able to tell what was going on.

Chairman Ludwig said he noticed that the ratio of pull tab income to bingo income is very high to compared to other charitable licensees. He asked if that was because they also operate a lounge. **Ms. Chittick** said yes, and they have really good attendance in their lounge due to accessibility and location.

Commissioner McLaughlin said it was evident that they don't spend their money on salaries.

Commissioner Herbold said she was very impressed by the programs and noted there is only one paid employee who works a little more than 50 percent of full time for \$6,000 a year. She said all the rest of them must be volunteer workers.

Commissioner Herbold moved that Amvets Post No. 1 be approved as a charitable organization and authorized to conduct gambling in the state of Washington; **Commissioner McLaughlin** seconded the motion. *Vote taken; motion carried with four aye votes.*

PUGET SOUND MUSIC SOCIETY, Tacoma

Ms. Chittick said this organization had two representatives present to answer questions – Ken Thompson, controller, and Tom Lowry, president. The organization was formed in 1986 and was licensed in 1990. The purpose of the organization is to maintain and promote musical organizations and groups through performances and education. The organization has 16 active members and provides services through three programs – an adult concert band, a musical educational program, and a musical grant program. In terms of compliance analysis, the organization satisfied the combined income percentage requirement for Class "I" bingo by achieving

a 15 percent net return. However, the organization did not meet program expenditure requirements because of the receipt of an unexpected settlement from Washington Natural Gas totaling \$91,150 late in the third quarter of 1996. The settlement was the result of a suit over a defective heating ventilation/air conditioning system that was purchased from Washington Natural Gas back in 1993. Without these unexpected funds, the organization would have been in full compliance with this requirement. Due to the unforeseen circumstances, the organization did not meet the program expenditure requirements; however, since this was an unusual occurrence and is not expected to be repeated, staff recommends that Puget Sound Music Society be approved as an educational organization and authorized to conduct gambling activities in the state of Washington.

Tom Lowry, PSMS president, said they just added a very competent swing band to their ensembles and they put on a two hour concert last Sunday at the Point Defiance Zoo. **Chairman Ludwig** asked if he had a schedule for the swing band. **Mr. Lowry** said the June concert will be performed both in the Rialto Theater and the Washington Arts Center in Olympia. He said that concert is usually Broadway music or swing music special arrangements for big bands. He thinks they will have in the personnel most of the swing band because they anticipate playing a Stan Kenton arrangement by Bill Liston and several others. They will probably have an Ella Fitzgerald medley as well. They hope it is as well received in Olympia as it was in Tacoma.

Chairman Ludwig said he noticed on the financial statement that, compared to 1995 and 1996 at a time when a lot of bingo operations were suffering because of competition from other licensees and tribal casinos in their neighborhood, the Puget Sound Music Society showed a substantial gain from 1995 to 1996 just on bingo. He wondered how they managed to do that. **Mr. Lowry** said he gives credit for that to Lynn Alexander, because she keeps on top of the schedule and makes certain they have a friendly atmosphere. He said they probably will not be able to enjoy a substantial gain in 1997 because their business has contracted. He said for awhile they were rooting for the Mariners bullpen because last year when they got in the playoffs their attendance really went down. Also the Puyallup Fair negatively affects them. He said they have installed a TV in the bingo hall without sound because it looks promising for the Mariners to go on and have a substantial post season schedule.

Commissioner McLaughlin moved to approve this group as an educational organization and authorized to conduct gambling in the state of Washington; **Commissioner Herbold** seconded the motion. *Vote taken; motion carried with four aye votes.*

BIG BROTHERS/BIG SISTERS of TACOMA/PIERCE COUNTY

Ms. Chittick said this organization was formed in 1963 and was licensed in 1974 to provide positive role models to adults, children and community members through the development of friendships and encouragement of self esteem. The organization serves boys and girls ages six to eighteen through an adult-child matching program. In addition to this program the organization provides the following services. They have an educational program called RISE (Road to Independence, Self Sufficiency, and Empowerment), which targets parenting, pregnant and at-risk girls. They also have the Neighbor-to-Neighbor program, which joins PLU students with the children of battered women. They also have started a program called VOICE (Volunteers for Intellectual and Cultural Exchange), which matches first generation Vietnamese immigrants with second generation immigrants to provide a healthy transition into American culture. In terms of compliance analysis, the organization met the combined income requirements for a class L bingo with a 15 percent net return. In addition, the organization was in compliance with program expenditure requirements and supporting services did not exceed 35 percent of their total functional expenses. The staff recommends that this organization be approved as a charitable organization and authorized to conduct gambling activities in the state of Washington.

Chairman Ludwig asked if Ms. Tellefson had any information about this group to share. **Ms. Tellefson** said she is a big sister who went through their application process last year that was amazing. It was very thorough – two different training sessions, personal interviews with counselors, visits to the home – it was very well done and a very involved process and she enjoys the relationship she has with her little sister. She was matched with an eleven-year-old girl who is a joy to spend time with. She said she sees it as a very worthwhile organization.

Commissioner Forrest asked if she knew anything about the VOICE program. He said they seem to have a very innovative and thoughtful idea at a time when the issues are being dealt with all over the country in one form

or another and it seemed to be very beneficial. **Ms. Tellefson** said she did not have much information but would find out about it for him.

Senator Prentice said she would be interested in finding out how members of the community find out about these programs. **Ms. Tellefson** said she knows that being matched with a big sister or a big brother, both the parent and the child must be involved in the request. She said she would get more information about this.

Commissioner Herbold moved to approve this organization as a charitable organization authorized to conduct gambling in the state of Washington; **Commissioner McLaughlin** seconded the motion. *Vote taken; motion carried with four aye votes.*

WHATCOM COUNTY CRISIS SERVICES, Bellingham

Ms. Chittick said that Kathleen Marshall, executive director, would represent the organization today. The organization was formed in 1979 and was first licensed in 1983. The organization provides help to people experiencing personal distress. Utilizing over 200 volunteers, the organization was able to provide services to over 30,000 clients during 1996 through programs such as the crisis intervention program, which is a 24-hour service providing information, referrals, and problem solving. This program includes a crisis line and a teen line that responds to calls. They have a domestic violence program that offers support and advocacy and information to those affected by an abusive relationship. They also have a sexual assault program that provides crisis intervention and on-going advocacy to victims of sexual assault as well as their family's friends and partners. Finally, they have a community relation program that coordinates community education activities and recruits program volunteers. In terms of compliance analysis, the organization did not meet its required combined net income percentage of 14 percent as a Class "K" bingo. The organization's net return was 12.3 percent. An agreed order was issued and the organization was granted a variance of 1.7 percent based on the fact that they were 4.4 percent above their required net return for the six months ending June 30, 1997. Staff recommends that Whatcom County Crisis Services be approved as a charitable organization and authorized to conduct gambling activities in the state of Washington.

Kathleen Marshall, director of Whatcom County Crisis Services, said she was there to answer questions.

Commissioner Forrest said, as a resident and denizen of Whatcom County, he is well aware of the good services that they have provided to the County for a long time. He thinks it has the enthusiastic support of everybody concerned with mental health in the big sense.

Chairman Ludwig asked if this is the same organization that former Commissioner Katy Casey was involved with. **Ms. Marshall** said yes, and that she was a hard act to follow.

Commissioner Ludwig said it wasn't her fault that the bingo revenue decreased substantially from 1995 to 1996 and wondered if the competition in Canadian influence had been responsible for the decrease. **Ms. Marshall** said yes, it was, and that they were doing much better this year, but she also said everyone was doing better this year, so she didn't know how much of that was attributable to them.

Commissioner Forrest moved to approve this organization as a charitable organization and authorized to conduct gambling activities in the state of Washington. **Commissioner Herbold** seconded the motion. *Vote taken; motion carried with four aye votes.*

DEFAULT ORDER

Betsy A. Alcorn; CR 97-0484

Ms. Tellefson said this is a default hearing or request for a default order on Betsy A. Alcorn. The director issued charges denying her application for a card room employees license based on her criminal history and because she is currently serving a term of community supervision. Charges were issued, she did not request an

administrative hearing, and she was also notified of her opportunity to object to the default by letter. The staff is requesting denial of her application for a license.

Chairman Ludwig asked if these convictions were in Oregon or in Washington. **Ms. Tellefson** said she didn't know, but she could look it up.

Commissioner McLaughlin moved to deny this application and enter an order of default; **Commissioner Herbold** seconded the motion. *Vote taken; vote carried with four aye votes.*

CARD ROOM CONTRACT

Charlie Mac's

Ms. Tellefson said this is card room contract under the current pilot test program that allows an increase in the number of tables, alternative methods of collecting fees and/or progressive jack pot schemes. This is for Charlie Mac's North that is located in Shoreline, Washington and they are requesting two additional tables for a total of seven tables. They would like to conduct a rake at four of those tables and one jack pot scheme. They have paid their deposit. Staff recommends approval.

Commissioner McLaughlin asked what the difference is between a social card room and a commercial card room. **Ms. Tellefson** said social card room activities are conducted in clubs like the Elks, Eagles, paternal clubs. These are members-only activities. Commercial card rooms in restaurants or any place that has food or drink for on-premises consumption can apply for that type of license. **Commissioner McLaughlin** asked why Charlie Mac's North is to conduct a social card game.

Director Miller said social card game is defined as an authorized activity. So it is not social card games but social card rooms. That is just a statutory term. He said it is ironic that the fraternal clubs and organizations that have social card rooms have no limit on what they can wager. By statute they were never limited. So that's why the Saturday night high stakes games went on for years and still do without any limitation in clubs.

Chairman Ludwig asked what they do when they want a player-supported jack pot scheme and if that would involve one table or all seven. **Ms. Tellefson** said that it is typically one table.

Chairman Ludwig said they were on the verge of adopting the house bank rules. He wondered if there was enough advantage to the licensee in this case to pay the fee for this contract participation when they may very well want to start right in under the house bank rules. **Ms. Tellefson** said that all they have to do is add the fee for house banking in order to continue to conduct house banking so they have already paid the fee for these activities. They could pay the additional \$5,000 to conduct house banking and add that to their contract at a later date.

Mr. Bishop said the agency would have to do some prorating and adjusting to make sure that they get all of these activities coming due at one time. For example, in this case, next year they would have to pay this in August and then come back in November if they happen to go into the house games. So staff will align those up when they converge the two rules.

Chairman Ludwig asked if anyone here is from Charlie Mac's North. No one came forward.

Commissioner Herbold moved to approve the contract for Charlie Mac's North in accordance with the terms set forth in the operating agreement and the appendix attached thereto. **Commissioner McLaughlin** seconded the motion. *Vote taken; motion carried with four aye votes.*

PETITION TO THE COMMISSION FOR RELIEF FROM NET INCOME COMPLIANCE

Mr. Bishop said he would go over the regulatory philosophy of how the agency got to where they are, their regulatory philosophy for bingo and nonprofits in general and also a background from his perspective the early 1980's to 1995 and the task force that this rule came out of.

Mr. Bishop said other states take a completely different approach to regulating bingo from that of Washington State. Every jurisdiction he is aware of, and he knows most of them, either have a combination of limiting prizes – in other words they can only give a prize of \$200 at any one game or can give away \$1,000 for a session total. That, plus they limit expenses such as only being allowed to pay a worker \$5 a session to work, or only pay a landlord \$50 for the use of the building, which are specific requirements. Early on in Washington, bingo was very competitive. Tribal games got started very early and there are no limitations on tribal games. Washington games have a limitation of not only 3 days a week but the building can only be used 3 days a week. This becomes limiting when considering capital outlay for a large bingo game. Tribal games and military games, which are also within the state, do not have any such restrictions and, therefore, immediately get a competitive advantage. The staff's approach is more entrepreneurial and the fact that bingo is a business and that the staff as regulators would not get involved in micro-managing them.

Mr. Bishop said that in the beginning, the Commission made one of its roles to say that the statute and the Legislature said that it was okay for gambling for nonprofit purposes. It was to the public's benefit to have the money coming from the gambling activities to go toward the purposes of charitable and nonprofit organizations. The agency does not get involved in the promotion of gambling. The Commission took on a goal of helping the charities make as much as they can and the staff has provided advisory services to some of the games that were foundering. In the early 1980's, there were managers of bingo games who would run a game from the player's perspective rather than a from a business perspective. Today, that is no longer happening in Washington – they are very well managed and run just like businesses because it is necessary. Previously, there was very little capital outlay to start a major bingo game in this state, but today an organization needs a minimum of \$500,000 to be able to fund the first six months. After that, it would have to remain successful.

Mr. Bishop said the market became saturated here. At one time, there were more than 700 bingo games; in the early 1980s, there were about 500. There were only so many dollars around and as more people competed for them, the bottom line became smaller. The Commission had the statutory authority to limit the amount of income that an organization could make from bingo, but the staff saw this as counterproductive. Like many businesses, economies of scale come into play – the bigger the game is, the cheaper per unit it costs to gain a dollar. Expenses go down per dollar gross as the game gets bigger. If they were limited at \$500,000 or even \$1 million, it would decrease the amount of dollars that were available for charities to use. This brings up the question of whether the Commission wants to limit the size of a particular organization. The approach has always been to look at the community good. For example, if \$10 million were available in this community for sales of bingo, the Commission could, by allowing games to get larger, increase the amount of net income that would come out of that \$10 million. If that net income went back into the community, the community as a whole would be better by having more dollars to spend rather than one organization keeping it.

Mr. Bishop said that prior to 1984, bingo prizes awarded and net income was unregulated. When the prize was began, net income statewide decreased from about 12 percent to 8 percent in a little over a year's time. Whereas it was 12 cents out of every dollar going back to the community, the games had become ineffective in making money. For the first time, the games were losing money. They had to utilize money that they had saved to put back into running the games. There was an extensive study of bingo and specific prize limits were put into place as well as a net income requirement. After studying it, the Commission still elected not to go to specific limitations but rather to say on a monthly basis, they could give away only a percentage of their prizes, but not saying they could not give one that would be \$1,000 or whatever. That particular regulatory scheme evolved over several meetings and it was changed three times between the period of 1985 and 1995, either adjusting the limits one way or the other for inflation, for example. In 1995, there were more than 27 percent of the regulated licensees out of compliance with the net income requirement. Several licensees approached the Commission asking for relief.

Mr. Bishop said the Commission at that point passed an emergency rule placing a moratorium on the sanctions that were in the rule for this and also directed that a task force be formed to study it to see what was going on. After several meetings, the task force came back with several recommendations. The first and overriding factor

used in the task force study was that the Commission could not control the outside environment; for example, tribal casinos, Oregon gaming, the Lottery or British Columbia. The only control the Commission had was over its licensees. The first recommendation was to mediate competition between the licensees to keep them from driving the profit down through competition as much as possible. The second finding was that they should be allowed to have increased marketing opportunities. Up until then, the Commission had been restrictive regarding any type of promotions that involved giving things out, such as coupons. The third recommendation was to develop a flexible regulatory scheme, which allowed the staff and the Commission to look at an organization in its local environment rather than looking at a total statewide program. For example, if an organization were next door to a tribal casino, or on the border of Oregon or British Columbia and laws were changed that affected a business negatively, they obviously had a competitive disadvantage that an organization not located near such competition did not have to contend with. The rule was changed to allow for flexibility so that the director, based on conditions, could grant up to a 2 percent variance to the limit. It also allowed an organization that had been limited to work themselves out of it.

Mr. Bishop said that, from the staff's perspective, the Commission has always been reluctant to recommend suspensions of licenses or fines when an organization could not make their net income. The staff did not think they should be taking fine money from these organizations that would otherwise go to their programs to bring money into the Commission's coffers. They realized that if a game were shut down for more than one day, they would be destroyed because they would lose all of their customers. Based on that, the regulatory scheme was changed. Every organization that came before the staff to plead their case asked for a chance to do better. They would say they were hiring a new manager, or changing their schedule. This new rule allowed them to work it out themselves. They could have a license limited and as long as it was within two quarters and they made it back, they were allowed an increase in their license with no penalty. Finally, when an organization was out of compliance more than 2 percent, the rules allowed them to appeal this final downgrade of their license before the Commission.

Commissioner McLaughlin asked what the practical part of a downgrade is if they don't have the attendance and what they are losing by being downgraded. **Mr. Bishop** said they always hope that the attendance will come back. **Commissioner McLaughlin** asked if they could come back for an upgrade if the attendance does come back. **Mr. Bishop** said yes, if they are in compliance, but that is not always easy because many of these organizations made major capital outlays and are tied to long-term leases. In some cases, simply keeping the doors open will help them out, but if they do close, in most cases, the game down the street loses attendance because the games cannibalize off each other.

Commissioner Forrest asked what two figures the staff divide to get the net return figure. **Mr. Bishop** said it is the combined net income from the bingo operation, which includes pull tabs, any raffles, the snack bar profits, and the bingo profits. That number is divided only by the bingo gross receipts and local taxes are counted as a proper use of funds. As long as the organization pays local taxes, this is considered to be a nonprofit purpose and they are given credit for payment of local taxes.

Commissioner Herbold referred to the presentation in the commissioner's packets under the section that talked about the task force, the last paragraph says "the task force's consensus was that variances should be limited to 2 percent and only granted under certain circumstances." She asked if a licensee needs a variance greater than that, perhaps it is a licensee that is hurting other licensees in the area by taking a percentage of the customer base but failing to meet its requirements. She wondered if that is happening here aside from the good work that the organization does. She said that later on in one of the attachments, the document in support of their petition says that their fixed bingo hall expenses require them to have between \$1.5 and \$2 million in gross to generate the necessary net return. She said that when their fixed expenses are that high and their net return has continued to be that low, they may be merely siphoning off other bingo customers and hurting some of the other operations in the area. She asked if such a situation is a hopeless case.

Mr. Bishop said the answer to her questions was both yes and no. The community itself will be better off if revenues are coming back for charitable or nonprofit purposes. But the community will suffer if certain services are dropped. In this case, the Big Brothers and Big Sisters have provided an excellent community service. Other factors include how those games in the immediate market area are affected. The staff sends out notices to the

area organizations to come and testify when a group is up for a variance. Those who are affected can say that they are being cannibalized or they can say they support it and that they think the organization is doing a good service or that they can all get along in this area.

Commissioner Herbold said that if, after analyzing the qualification review, their fixed expenses were that high and their net return that low, how much they are actually able to put into their program services at this point. **Mr. Bishop** said probably very little. If the Commission is going to limit income from bingo, the statute says they must take into account three items. Those items are the scope, character and nature of their programs; other income sources; how can they fund this program from other sources, whereas maybe there are grants available; or maybe individual contributors. This particular organization does not have the ability to go after dues like a fraternal club could. The third is whether their programs are charitable as opposed to nonprofit. It is a difficult decision and this is the first case to come forward.

Commissioner McLaughlin referred to a statement made under the qualification review that said bingo games were up in 1997. She noticed this game has had problems and the Everett Fire Fighters who have been in Marysville for years have closed their doors. This does not seem to go along with what was said. **Mr. Bishop** said that, from the Puget Sound Music Society's perspective, they may be up, but the draft numbers show bingo as a whole is down another \$8 million or so from the last year and is down about 4.5 percent. There are pocket areas where they do fine. There are other pockets in Whatcom County that are impacted by the three casinos and by being located right on the border. Canada is aggressively going after customers by changing their gambling laws. The government has even discussed making crossing the border more of a hassle. In any case, he does not believe bingo is up in Whatcom County.

Ms. Tellefson said this issue is before the Commission today because the director issued a Notice of Intent to Limit the License Class of this organization because they failed to meet their net income requirements pursuant to WAC 230-20-062(2). Because the organization was out of compliance by more than 2 percent, the director did not have the discretion to review the factors and to determine whether a variance could be granted. So the organization petitioned the Commission for relief from these requirements asking that their gross receipts level not be restricted. With a limitation in license class also comes a limitation in the level of gross receipts that the organization can achieve. The statutory authority for reviewing this issue is found in RCW 9.46.070(10) under the Commission's powers and duties. The Commission has the discretionary ability to establish maximum limits on income derived from bingo and that is discretionary not mandatory. In doing so, the Commission can look at the nature and scope of the charitable or nonprofit activities, sources of other income that the organization has available to them and the percentage of income that is charitable versus nonprofit. The organization is going to be prepared to discuss those issues with the Commission. WAC 230-20-062(5) sets forth the parameters under which an organization may address the Commission on this issue. It must be at a regularly scheduled public meeting and the basic administrative review procedures found in RCW 34.05.491 govern it. That is appeals from brief adjudicative proceedings. This is not at an appellate level and is an unusual circumstance. This is a situation where the organization is coming directly to the Commission. These guidelines are very broad – basically they just say the parties have to both be allowed to explain their views and the Commission must issue an order in writing. Under the regulation that sets forth what the commissioners will look at, it also says that at least an officer of the organization and the gambling manager must appear before the Commission and they are both here today. Other licensees in the area must have the opportunity to testify on behalf of the organization either for or against this petition. There are representatives from other organizations here who would like to testify on behalf of Whatcom County Big Brothers/Big Sisters. The Commission can hear both sides of the issue and must issue an order either way.

Commissioner Forrest asked if this is the first one of these that has come up. **Ms. Tellefson** said yes it is somewhat of a precedent.

Commissioner McLaughlin asked if the rule the Commission put into place a year or so ago for the purpose of preventing this type of situation. **Ms. Tellefson** said the moratorium was in place for about a year. It concluded at the time when the rules package was before the Commission for final action November of last year. This rules package is a result of all the studies that occurred that moratorium period and this is the first time that there have been reviews under this program and this is the first time since the rule became effective that a licensee has

petitioned to the Commission. **Commissioner McLaughlin** asked why, if staff saw this coming down the road, they put in the moratorium. **Ms. Tellefson** said that, from the staff's perspective, at least from her perspective in handling the administrative case process, they wanted to come up with procedures that would ensure some level of uniformity and would allow them to create a record so that they would have some sort of precedents to look at in the future for why variances may have been granted, either by the director or why the commissioners have chosen to grant variances if the issue is not before the director or if it is an issue is on appeals. From her perspective it was important to create a process that made it fair and developed a precedent.

Commission McLaughlin asked if it was before them because it was over 2 percent. **Ms. Tellefson** said yes.

Director Miller said the moratorium was requested a few years ago because in the state of Washington many games were failing to meet net income. There was a crisis and at that point they could have downgraded many more games and had many more problems. The task force came out of that and the issue was negotiated for over a year. The task force was directed by Deputy Director Bishop, who worked with the licensees to solve this. Once that was solved, then the moratorium went away, this is in place of the moratorium, this is the new process. The real thing to keep in mind is without net income, there is chaos. As Commissioner Herbold pointed out, when games are well below what they are required to make, they are taking away money from other games that could be used for charitable purposes.

Ms. Fischer said in June of this year, a notice of intent to limit license was issued to Big Brothers and Sisters of Whatcom County. This action was taken because the organization's net return for its measurement period ended December 31, 1996 was .69 percent. The required net return for its license class was 6 percent. Recently, Commission staff determined that the organization's net return actually was .33 percent, but what happened was the organization amended their quarterly activity reports and the agents recalculated it and it affected the WSGC staff's calculation. From January to June of this year, the organization's net return was 4.41 percent. After receiving the Notice of Intent to Limit License, Big Brothers and Sisters submitted a petition for an opportunity to explain their circumstances to the Commission and requested that their license not be limited at this time.

Ms. Fischer said that in its petition, the organization attributes its difficulty in meeting the net return requirements to four main factors. First, they said in September, 1995 the Lummi Tribe began operating bingo on the same weekend days as the organization. When the tribes stopped operating bingo in the third quarter of 1996, Big Brothers and Sisters saw a significant increase in their net return from a loss of 6.17 percent in the previous quarter to a positive 5.4 percent net return for their organization. Subsequently, the Lummi casino closed on August 26, 1997 and is no longer operating. Secondly, the organization cited that in December of 1995, Skagit Valley Casino began operating bingo. It operates bingo seven days a week with four sessions each weekend day. Big Brothers and Sisters conduct two sessions each weekend day. There has been a significant decrease in the value of the Canadian dollar. The licensees stated that the gambling limits in casinos in lower British Columbia were recently liberalized and slot machines have been authorized and should be in place in October of this year. Lastly, the organization cited that in September of 1995, their bingo manager resigned. The organization was unable to hire an experienced manager until they hired Mike Boyle on May 15, 1996. In the interim Big Brothers and Sisters experienced net losses for three consecutive quarters.

Ms. Fischer said that during Mr. Boyle's first full quarter, the licensee's operation returned to being profitable again. In its material submitted to the Commission, Big Brothers and Sisters stated that they had changed their bingo format in an effort to improve their net return. They also indicated that they decreased their prize pay-outs; they decreased their total operating expenses and decreased their wages by downsizing staff, cutting management salaries, and freezing hourly wages in an attempt to try to meet Class "G" that will allow the organization to make \$1.5 million in bingo gross receipts. The Commission can also choose not to limit the organization's license but impose specific criteria the organization must comply with. Or last, the Commission can say they will waive all net return requirements at this time for this organization.

Ms. Fischer said that after reviewing the information that the licensee submitted to the agency, the staff recommend that the Commission limit the license to a Class "G," effective October 1, 1997, three months after the organization's current license year began. If the license were limited to a Class "F", the organization estimates it would exceed the gross receipts of this license class, which was \$1 million by December 31, 1997, and that

would close their doors until the next license year began. Next, if its application for an upgrade was denied, for example, the Commission chose not to upgrade their license to a Class "G", they would have to stop operating in December 1997. If the license were upgraded to a Class "G," the organization feels it could continue operating until next spring at which time it may qualify for upgrade under the agency's current rules. If a licensee meets certain net return requirements for six consecutive months, they can upgrade. Therefore, staff recommendation is that the Commission allow the licensee to upgrade their license, which, under the Notice To Limit License, indicate they would be downgraded or limited to a Class "F" license. The Commission's staff recommendation is that the licensee be allowed to upgrade to Class "G" license, which gives them opportunity to operate for a couple more months and hopefully they can meet the requirements to upgrade their license to a Class "H" as the licensee is hoping. **Ms. Fischer** said that Mark Taylor, the executive director of the organization was here to talk to the Commission today.

Chairman Ludwig asked about the current license level. **Ms. Fischer** said they were operating at a Class H.

Chairman Ludwig asked if that was the type of license they had. **Ms. Fischer** said yes. **Chairman Ludwig** asked if there was a mistake in the Notice of Intent to Limit License. He was confused when he was listening because it talks about current Class "G" license and wanted to know if that was an error. **Ms. Fischer** said that in March 1997 they were upgraded to a Class "H." What happened is the director looked at the weather factors in that area and across the nation there was very bad weather in December. He said anyone who chooses to can submit to the Commission the figures for this time period and staff would not include those. By not including those factors, the licensee was allowed to upgrade to a Class "H" bingo license, which is what they currently have. Under the rule and without this petition, they would have had to be downgraded to an "F" if they followed the rule without their petition.

Chairman Ludwig asked if this Notice of Intent to Limit come before they were upgraded to Class "H." **Ms. Fischer** said no.

Commissioner Forrest said it boils down to the recommendation being based on a reasonable expectation that they can increase their net return and operate permanently in compliance. **Ms. Fischer** said that was correct. **Commissioner Forrest** asked if this would be tacked onto this calendar year's performance. He asked how much time they were recommending that they in effect have to bring this together. **Ms. Fischer** said if they are allowed to operate at a Class "G" level, they estimate that they could operate until this spring. The rule requires that if they want to operate at a Class "H" level, they must meet the net return requirements for that Class "H" license for six consecutive months. The licensee estimates that they can operate under the Class "G" guidelines or the maximum of the Class "G" license limit until the spring of this year so that will give them a few more months – maybe six months – to see if they come into compliance. **Commissioner Forrest** said he was confused about the degree of compliance that was expected – whether it was full compliance or whether the expectation was they could get within the 2 percent discretionary adjustment. **Ms. Fischer** said that it was full compliance that was expected. If the organization for the next six months achieves the net return requirement for a Class "H" license for six consecutive months, then they can upgrade their license and have no penalties.

Mr. Forrest asked if they ran into trouble again they would have the 2 percent option available if the director was persuaded that there was some good cause for using his discretion. **Ms. Tellefson** said she is not aware of a limit on the number of times a director can grant a variance, but there is a schedule in the rule that sets forth the amount of the downgrade for the first incident, and then the second incident, but in the event this organization needs to apply for a variance in the future, they can apply for a variance in the future even if a variance is granted at this point in time.

Director Miller said he thought the intent was really to give the organization an opportunity to correct the problem themselves. If not, they systematically start going down to where they should be based upon their return. They are basically operating out of class right now.

Chairman Ludwig asked if they were downgraded to Class "F" and their expectations come to reality, they would reach that by December 31 and would have to close their doors. **Ms. Fischer** said that was correct until their next license year, which would begin on July 1, 1998. **Chairman Ludwig** asked how would they ever get up to "G" or "H" again when there is that six-month meeting of that requirement. **Ms. Fischer** said that would be a very

difficult thing for them to overcome.

Chairman Ludwig said if they are Class "G" and they meet the maximum limits before the end of their licensing year, how do they get that six months experience to reach Class "H." **Ms. Fischer** said they are not able to do that, so if they have to close their doors on December 31, 1997 as they have estimated, they do not have an opportunity to meet the Class "H" level. They would have to come back into the Commission and say they want to continue their license on July 1, 1998, at a Class "G" level. Their doors would be closed for six months.

Director Miller said the reality of this is that any bingo hall whose doors closed for six months, in his opinion, it is very difficult to reopen that door again. Customers aren't very loyal; they do go to games that are open and to close for six months would end this operation for bingo and that money would not go to the organizations. Any recommendation we make gives them a chance to go further in the spring and have shot at getting up to a higher level and then coming back before the Commission at that time. Then if they do not make it at that point in time, but they are very close coming back before the Commission and looking at those factors as well.

Chairman Ludwig said that if they were at Class "G" and they reach their maximum, they have to close their doors, so how would they ever get that six months experience to go up to Class "H?" **Director Miller** said they were talking about the net income requirement – not the gross dollars, so staff is talking about the organization's ability to meet those requirements for the basic level so basically staff is looking at their last six months even though they are a captive at "G" they have met the requirements therefore they are able to go up and be upgraded. It is a very complex system, but has a good potential to work long term.

Mr. Bishop said they had talked in general that Whatcom County was under special circumstances and that he had recommended that the director provide a general variance of 2 percent for Whatcom County. It was not done because the particular games that were impacted in Whatcom County except this game already met requirements so we entered two agreed orders with them allowing them to upgrade, but he thought that when it comes time for this organization if they are granted a "G" license instead of the percentage being six percent with a general variance it would only be 4 percent; therefore, when they come to upgrade to H instead of having achieved 8 percent, it would only be 6 percent. **Mr. Bishop** said he was sure that the situation will continue – they are under special circumstances with the competition and the ups and downs and will be facing more competition with British Columbia the first of October when they start operating slot machines.

Commissioner Forrest said that he sees the purpose of a provision like this is to deal with special circumstances. Every special circumstance always generates a precedent and he wants to formulate a feeling of a principled position that would be at least in general terms applicable if the next problem is in Vancouver, Washington because of something that happens to Oregon or in Spokane if something happens in Idaho and the flavor he is getting is that when the director's discretionary authority is unable to deal with the crisis, that the staff feels that some further opportunity to a charitable organization to meet this is reasonable and he is concerned that it not go on forever or that it can be repeated every six months. He thinks there must be a firm commitment at a point at which they are not going to get any relief. He said that is hard to say coming from Whatcom County – this is a good organization that does good things. He know people who have been active and believe in it; nonetheless, he thinks the Commission must take the position that a reasonable time is a reasonable time and at some point that will expire.

Commissioner Herbold said she wanted to summarize her understanding of the discussion. She said they are currently at a Class "H," which has an 8 percent return and they are not even close. One option is to take them down to a Class "F," which has a 4 percent net minimum return and they are closer to that right now based on the last six months. **Ms. Fischer** said that the average for the last two quarters was 4.14 percent. **Commissioner Herbold** said that meant they were closer to Class "F." But, at either Class "F" or Class "G," they are not achieving the gross receipts that they state they need for their fixed expenses. So she wonders how there would be any money going to any charitable purpose if they are not even bringing in enough to pay their fixed expenses. **Ms. Fischer** said that was a difficult question. **Mr. Bishop** said that is a question for the organization to answer.

Ms. Fisher said that she wanted to point out if they were limited to a Class "F" license, she wanted to make sure everyone understands, on December 31st the organization estimates it would have to close its doors because it basically would exceed the \$1 million limitation on gross receipts. If they were given an opportunity to have a

Class "G" license, they expect not to meet that gross receipts limit until the spring of 1998.

Commissioner Herbold said that even so they may not be able to pay their fixed expenses. **Director Miller** said that may happen anyway if they are kept at a Class "H." That is not known because two quarters ago they were down so they brought in new management trying to pick up the game and they have made some real strides. And that's why the Class "G" seems to be a fair attempt to give them a chance to pull out. They will know by next spring.

Mark Taylor, executive director of Big Brothers/Big Sisters of Whatcom County introduced representatives from his agency: Nora Cederlin, a recipient of their services and volunteer Board President, Susan Kelly, who is a Certified Public Accountant. He thanked the Commission staff for working closely with them, specifically Jacki Fischer, who has been extremely helpful to him in interpretation of the rules and Amy Patjens has been very helpful in this particular process and all that is the result of the leadership from Frank Miller. He then gave a historical sketch of the agency. The agency started in 1977 and is organized under IRS Code 501(c) (3). They are 100 percent charitable; they have an affiliation agreement like all of the Big Brothers/Big Sisters agencies in Washington with the Big Brothers/Big Sisters of America. They are one of 500 agencies around the country. Pursuant to that affiliation agreement, they are mandated to comply with 65 pages of program operation standards. The funding they derive from charitable gambling goes to serve children and families pursuant to these standards and these standards create an excellent program that is recognized nationally as the premiere one-to-one mentoring program that has an impact on children and families.

Mr. Taylor said that in 1995 the national organization was given the completion of an impact study conducted by an independent research organization. There was an 18-month study involving 959 children around the United States from Big Brother/Big Sister agencies including the Spokane agency. They tracked 959 children who were divided into children who received mentoring services and a control group. After that year and a half there were many significant findings. Three of those findings were that after being matched for that period time, children who were matched were 46 percent less likely than the control group to engage in drug use, 23 percent less likely to engage in alcohol use and 1/3 less likely to engage in violence. That is the broad picture of the individual impact that this program has.

Mr. Taylor said they have been funded through charitable gambling since 1981. Kathleen Marshall is executive director of Big Brothers/Big Sisters of Whatcom County. Clyde Bock was their first bingo manager who got the program off on the right foot. Through the 1980's and into the 1990's charitable gambling has been a very productive funding source for their mission and has helped them serve thousands of children and single parents and for most of those years, charitable gambling was the single funding source for Big Brothers/Big Sisters of Whatcom County. Early on they were able to say to the United Way which had been an initial funding source for the agency that they wanted to maintain their membership status but were not going to ask for money so that they could allocate to other agencies United Way funding that had originally come to them. In 1992 through 1993, some of the revenues that they generated and could not use immediately was distributed to about 24 other local charities in Whatcom County. He thanked the board for the strong tradition of seeing itself as part of an important network serving children and families in Whatcom County. He said many things led up to the problems that they had beginning in the fall of 1995 and he asked Susan Kelly, their board president to speak to those and to address some of the specific points in the rules that the commissioners may consider in determining their decision on this issue

Susan Kelly, Board President, said she has served on the board for four years, one year as board president and two years as treasurer. She was recruited during the winter of 1993, which was the ending of the heyday of bingo. Within about six months they became aware that the bingo revenues were going down and within a year, the climate of the board had changed dramatically. They had gone from a policy setting board that was very heavy and law enforcement, attorneys, social services to what needed to be a fund raising board.

Ms. Kelly addressed some of the factors that were defined in a memo the organization received from their legal adviser that under WAC 230-20-062, they may consider in this petition the commissioners have before them. She emphasized the significance of the outside factors that were mentioned by Mr. Taylor. She referred to table #2 in their packet that was their response to their petitioner's record of net return compliance. Out of 12 or 13 years of operation between 1982 and 1995, only in 1993 were they out of compliance and that was due to the fact

that they earned \$39,000 over their gross receipts that made them jump up to a next classification. Since 1995, the board has spent much of their time addressing the non compliance issue. Some of the circumstances that were outside of their control was the devaluation of the Canadian dollar. Not only has that reduced the number of Canadian players (historically the Canadian players ran from 35 to 40 percent of their players) now approximately 20 percent. The devaluation of the Canadian dollar has had an adverse effect on Whatcom County in general. As a CPA, she has seen the impact on her clients. Those people play bingo. If someone's hours have been cut 40 to 30 hours a week, that last 10 hours of income was their discretionary income and they are less apt to play at their hall.

Ms. Kelly said they have reduced both the number and amount of prizes they are paying out. Their prizes have gone from the popular car prize or \$10,000 cash to a \$3,000 prize. The total pay out since 1994 has dropped 24 percent and are working hard to reduce the percentage of pay outs without alienating their customers. They have reduced the total operating expenses at the bingo hall by 25 percent of their operating expenses. They have reduced salaries for their managers and have frozen hourly wages for two years. She emphasized the commitment that their managers and the executive director have to this mission. Director Mark Taylor took a voluntary salary cut in 1995 and 1996 that totaled 16 percent. Their bingo manager just volunteered a 10 percent cut. As a businessperson that sounds right to her, but as a board president she is very concerned about that. They cannot continue; they are professional, paid positions and to continue to expect that type of sacrifice is unrealistic.

Ms. Kelly said that the impact on their charitable program has been dramatic. The bingo issue has been a very divisive issue pitting those who feel that the risk is now greater than the benefits against those who think that any amount of money can be used as a tool to fund their mission. It is one less phone call and less time to go out into community and ask for very competitive charitable dollars. In 1995 they had 165 matches-- an adult volunteer (Big) is matched with a child (Little) from a single parent home). The parents of these children must trust the agency's placements. This takes a great amount of trust for a parent to turn his or her child over to a stranger. Now the number of matches are only 130 due to the cuts which consist of two full time positions within the agency. As more and more time is spent fundraising, less time is spent recruiting Bigs, which they are always looking for. There is a waiting list of almost 75 children. The boys wait up to two years.

Ms. Kelly said their vision of reaching 250 matches in 1998 has been postponed. To enable them to reach that vision, they built a brand new service center with funds that had been raised and invested from bingo. As a board member that is one of her proudest moments, in that after much discussion and soul searching, it was a unanimous vote to sell that service center. They are in the business not to hold property but to service these children and they did not want one single match to close having to tell a child that already has some loss in their life that they could not fund their match any more. Right now, the proceeds from the sale of that building is their major funding source, which is projected to be depleted in four years unless other funds become available.

Ms. Kelly said the board was motivated by their mission to reinvent itself and has become a fundraising board. As board members' terms expired, they began to recruit members who are in industry and who represent the major employers of Whatcom County--business people, bankers, and so they are developing these relationships so that they can continue to be a fundraising board. Since 1995, the board has raised over \$230,000 which is remarkable considering their original expectations when they first started. They have also received grants and Mr. Taylor has been a very important part of writing those grants. In a community the size of Whatcom County, as in every county, the competition for the charitable dollar is very competitive. She said she did not know how much they could expect the community to continue to support them in those types of giving. They need their bingo hall to continue to fund and service these children. If they were required to close their bingo hall, it would be the end of charitable bingo for Big Brothers/Big Sisters. There are significant costs associated in closing the hall. They have a lease that has 22 months remaining on it at \$7200 per month that they are contractually liable for. They also have employees that have accrued vacations and benefits that they would be obligated to pay out. So not only is it the loss of funds to their mission but there is a real economic cost in closing the bingo hall.

Ms. Kelly said what she was asking the Commission to do was to allow them to continue this dramatic recovery that their bingo hall is in the process of making since they have brought on their new bingo manager last summer. They have been profitable; they have gone from a loss to profits through this entire term and it is their goal to continue to work with their managers and to devise new ways to bring up their net returns. She requested the

Commission to consider waiving the net return requirements for this measurement period to enable them to continue this recovery and to then serve more children.

Director Miller asked what percentage of bingo revenues contributes to their overall funding source. **Ms. Kelly** said they anticipate about one-third this year. Their bingo hall has returned \$52,500 so far this year out of a \$300,000 budget through August. Another \$120,000 is projected to be fundraising grants and the deficit will be made up in their reserves from the sale of their service center. **Director Miller** asked what would happen if the Commission did not waive it entirely and put in a G level, would she anticipate any reason why if they were given that opportunity they could not comply at the level to then pursue an upgrade. **Ms. Kelly** said the only unknown is the effect the slot machines in Canada will have on their game. **Director Miller** asked if it is the Board's position that if they were to not make profit but just pay expenses, would they still want to remain in business simply to pay off the debt. **Ms. Kelly** said that if it ever came to the point where the agency had to transfer one dollar to support the bingo, the Board would vote to close. She said that if they could through negotiation with their landlord, which had not been successful prior to this, to continue to cover those expenses, probably yes. She went on to say that she had heard that because their agency was not as profitable as it should be that they are cannibalizing others. She said she did not agree with that and she hopes that the two representatives from the other bingo halls in Whatcom County that are here on their behalf will attest to that. What she has heard many times is that the more bingo halls there are the more interest it generates. She said it would hurt other Whatcom County bingo halls if they closed their doors. They are the only bingo hall within the city limits. She does not know that these players would go to 262 or further. She thought their location is very important to them.

Commissioner Herbold asked what the fixed expenses were for the \$300,000 budget they have used to fund their program at the current level and which has been reduced by 25 percent recently. **Ms. Kelly** said the \$300,000 does not include the \$7,200 a month rent. It takes \$300,000 to operate their agency completely separate from the bingo hall, so the \$7,200 a month is not within the \$300,000 figure. **Commissioner Herbold** asked if operating their agency is what allows them to fund the matches. **Ms. Kelly** said yes. She said the greatest expense would be the monthly rental of \$7,200. They also have approximately \$40,000 of leasehold improvements in that building which they are continuing to depreciate. If they were to close down they would walk away from those improvements. Within the agency the primary cost is personnel – the case managers, the executive director, accounting manager, but they are required to monitor and contact both the Big, the Little, and the Parent within the first year monthly and as the match goes on, quarterly, but it would be personnel. Those personnel expenses are in the \$300,000 budget.

Commissioner Herbold said she was trying to figure out where their need for \$1.5 to 2 million fixed expenses is coming in. **Ms. Kelly** said the problem was their net return, that is why they are here. The bingo hall is not returning enough to the agency, but even with the reduction of all the expenses. That's the gross receipts level that they are currently running at and as of \$1,501 million they would have to close their doors and that would happen as of the end of March.

Mr. Taylor clarified that in order to generate the 8 percent net return that they were required to, they need the authorization to generate a gross of \$2 million. What he did not mean to say was they needed \$2 million to pay \$2 million in operating expenses.

Chairman Ludwig said that it occurred to him that it would be more profitable to be a bingo landlord than it would to be to be a bingo operator. He suggested that she ask their bingo landlord to contact one of the former bingo landlords in the Tri Cities who had two back-to-back bingo units. He charged them roughly what her organization was paying and now one of them went out of business and the building is vacant and the other tried to negotiate, but he wouldn't, so they went across the street and built their own and now he has a great big two-facility structure sitting vacant. He said he thought the landlords are taking advantage of the charitable organizations.

Ms. Kelly said they had met with him repeatedly and asked for reductions. She introduced Nora Cederlin who is a single mother of four children who are within their mission. She was asked to come to tell the Commission what the Big Brothers/Big Sisters is all about.

Nora Cederlin said she lives on Lummi Island, where she recently watched the Lummi Nation close their doors to

bingo as well as all of their operations. She said that she hoped the Commission would consider potential impact of the closure of the casino to affect the amount of money that Big Brothers/Big Sisters in Whatcom earn in the near future. She has worked for 10 years in the grocery industry that is also affected by the factors in Whatcom County such as the Canadian dollar border crossings. She said their economic base is driven with what is going on in Canada.

Ms. Cederlin said that in October of 1993, one of her children revealed sexual abuse by her now ex-husband. She suddenly went from a two-income, two-parent family to a single mom of four on her own. She lost her house, was left with the entire debt of her marriage, no child support, and mounting costs of doing it alone. Then she received the gift of Big Brothers/Big Sisters. Other services helped her to continue working to maintain her seniority and health care such as subsidized childcare, counseling, Whatcom crisis services, but nothing compared to the help that her family received from Big Brothers/Big Sisters. She works long hours; she has had to work full time plus some to make ends meet.

Ms. Cederlin said that the mentors from Big Brothers/Big Sisters gave her children one-on-one friendship and are still part of their lives. She said much goes on behind the scenes of this program that she doubts many understand. The mentors work hard and are very dedicated to the children in her community. The agency does background checks and provides a great deal of training. Every month a person from their office calls and checks on how the match is going and occasionally even she gets a call to see how she is doing which makes her feel good too. The adults have made friendships with her children that will be a part of them for a lifetime. Her 13-year-old twins have each been matched for three years. Her son's Big Brother has had to move to California due to a job relocation, but they still communicate weekly. They spent spring break together at Disneyland. Her youngest daughter, age 8, is matched with a college student that takes her on walks, they swim, go to movies and share a lot of time talking. Her oldest daughter has a match that has made a big difference in her life. When her daughter reached puberty she became a run away, used drugs and spend time in jail. There were times she felt like giving up. Due to her daughter's relationship with her mentor, she is an honor student who graduated top student out of a class of 800 with five honors and awards including President Clinton's award. She said she wished every parent could be as lucky as she to have such a wonderful teenager as she does.

Ms. Cederlin said the gift the Commission could offer would be to see to it that this organization's bingo operation does not have to close. There are hundreds of people in Whatcom County showing this commitment. She said that someday, people here may be touched by the life of one of the children in this program. She said that mentoring works and the greatest gift the Commission could give today is to see that the doors of the bingo operation don't close. Whatever action is taken today will affect her family and members of the community. Her kids have come through some incredibly tough times through the benefit of this program. She said that someday, people here may be touched by the life of one of the children helped by Big Brothers/Big Sisters (BB/BS).

Mr. Taylor said the organization is asking for some flexibility from the Commission as they continue their recovery. In the fall of 1995, they saw what was coming with the opening of the nearby Harrah's Casino and bingo. At the same time, they had a change in bingo management and tried to develop a new bingo format, which turned out to be a disaster. Then Mike Boyle came on and re-developed the bingo format and they were on the road to recovery. After nine months of losses, they are now showing they still have the potential to make money. Since August, they have been profitable. The Commission staff has been as flexible as possible, but now it's up to the Commission to allow them to continue their recovery. He referred to a spreadsheet that shows a comparison of second quarter 1996 when they lost \$24,000, and second quarter 1997 when they were \$11,000 ahead. Fall and winter are stronger profit seasons and attendance has already gone up to over the 200 procession level, which is what they need in order to be profitable. They are asking to retain a Class "H" license so they can still be authorized to earn gross receipts of \$2 million. With that, they feel they can remain close to 8 percent.

Chairman Ludwig asked if the group would come back before the Commission in January or February to report on how they are doing. **Mr. Taylor** said he would be pleased to do whatever the Commission requests.

Kathleen Marshall, Whatcom County Crisis Services (WCCS), testified that they have gone through a series of very similar struggles due to the environment. There is nothing that matches the services that BB/BS provides to the community. WCCS was able to pull back out and, although the summer was difficult, they were able to stay

at 14 percent and are at 17 percent now. The climate has improved so that BB/BS may now be able to succeed.

Chairman Ludwig asked why WCCS has been able to meet the requirements, while BB/BS has not. **Ms. Marshall** said she doesn't know but suspects it's because her organization is closer to the Canadian border and is a larger organization. When WCCS was out of compliance, they were able to drop the prize payout, and that helped. They also had to cut expenses, which was enough. When BB/BS cut expenses, it wasn't enough because they didn't have as much they could cut. They did everything they could. The environment for bingo in Whatcom County has changed, but no one knows what will happen in the future. BB/BS has demonstrated it can do well, and WCCS has no objection to the Commission granting their request.

Mel Hansen, Ferndale Band Boosters, said the difficulties result from not only the Canadians, but also the tribal casinos. The Lummi Casino has closed, but there are still other casinos – Upper Skagit, Nooksack, and Swinomish. Those have dramatically affected bingo in Whatcom County. His organization has also been competing with the unregulated games that can offer prize payouts with no bottom line profit they must meet. They have viewed fair competition as healthy for the industry. They've had another organization in Whatcom County, the Blaine Eagles, which would be the only game left on the weekend. Ferndale Band Boosters has their games on weekdays. They are in support of granting BB/BS's request.

Clyde Bock, Mr. Ed's Casino and Bingo Supply, said he is somewhat involved in that he helped start the BB/BS bingo operation and was also one of its founding board members. Having been a bingo manager in Whatcom County, including with WCCS, he was one of the bingo task force members. He pointed out that Blaine Softball also shut its bingo game down. The scenario of moving BB/BS to a Class "G" rather than a Class "H" may not sound like much, but to the organization, it means they can generate revenue. Since they have the support of other games in Whatcom County, they should be allowed to operate as an "H" but meet the requirements for a "G." That way, the Commission has the assurance of the board that they will not tolerate a negative situation, as has been in the past with some other organizations. This procedure was set up by the bingo task force for this exact purpose.

Chairman Ludwig said the reason he asked if they would be willing to come before the commission in January is because they may be willing to waive the net return requirement. **Mr. Bock** said the risk for the game is that Class "G" is a fairly low class. **Chairman Ludwig** said his idea is to allow them to operate at a Class "H" and waive the net return requirement for a period of time. He wouldn't want it waived for an entire year. **Mr. Bock** said he doesn't think there's anybody in the industry that wants that either and the task force never intended for that to take place. Operations should not be allowed to operate at a break-even point for a long period of time and just pay expenses. This game was once a Class "J" game, so they have reduced. They are not a game that is out there to just pump the gross. They are trying to recover from a very difficult period of time.

Ms. Tellefson pointed out that this organization's fiscal year ends December 31, 1997. Thirty days following that, they will send in their reports and the staff will be looking them over at that time.

Chairman Ludwig asked Mr. Bishop about not limiting the license at all and waiving the net return requirement. **Commissioner McLaughlin** asked if that would be better than putting them down to a Class "G." **Ms. Tellefson** answered that if the organization went down to a Class "G" they might run up against their gross receipts and would have to apply for an upgrade.

Commissioner Forrest said it appears that either they are going to make it, or they are going to be out of business in the near future. As a Whatcom County resident, he wants to see them succeed. In six months, they'll either be on the road to recovery or maybe it will be time to close the doors. He asked if they might be some hidden risks in taking Commissioner Ludwig's suggestion. **Ms. Tellefson** said she doesn't see any problem with that. **Ms. Fischer** said she didn't either. She said the Commission has to consider if some money is better than no money. There are requirements and there are other organizations out there that are meeting the requirements, which makes this a very difficult decision.

Commissioner Forrest said the people the most directly affected are the most supportive, so it must not be a question of taking business from those other groups if they're not feeling threatened. **Director Miller** said this is the first one to request this. BB/BS is a great organization, but the key here is setting a precedent and giving

some stability to handling these requests in the future. It's important, if the Commission decides to give a waiver, then conditions must be place on that and expectations made clear that, at the end of the period of time, if they are still operating at that level, then they may have to be downgraded to that level at that time.

Mr. Bishop said the recommendation to a "G" was developed logically. If they did grant a 2 percent variance, they would be in compliance with "G." Also, if they are able to improve to six, they could automatically upgrade to "H" by law and without coming to the Commission. If they moved up to a six with a two percent variance they would be allowed to go to an "H" for the next year.

Director Miller asked how they are doing so far. **Mr. Taylor** said that, unfortunately, July was not a good month, but August was better and September is really taking off. With the game closing up north, the Canadian influence has just about doubled.

Chairman Ludwig directed the Commission's attention to a memo written by Amy Patjens that sets out the options and reasons for going to a "G" and granting a 2 percent variance. He asked if this would work for the organization. **Mr. Taylor** said that is new information to him. He didn't know they would be automatically eligible for a Class "H" if they generate 6 percent return with a variance. It would mean that the director would have the authority to grant a variance. **Mr. Bishop** said the problem was that they were not within that window. **Mr. Taylor** said he understands that but asked if, between October 1 and March, 31, in those six months they generate 6 percent net return, then can they come to the director and request a variance to be at a Class "H," which is one above? **Ms. Tellefson** said there's a provision in the rules for requesting a variance both when they are subject to their license being limited and also in anticipation of a request for an upgrade. Those are the two instances when the director can grant it.

Commissioner Herbold asked if a two-month history is sufficient. **Ms. Tellefson** said that typically the staff looks at six months, but it's up to the director and the other factors present.

Commssioner Forrest suggested, in view of the time constraints today, that the Commission accept the staff's recommendation, but with the understanding that the commissioners look it over tonight and, if it's necessary, it can be placed on the agenda for reconsideration at Friday's meeting. He senses there are enough votes to accept the staff's recommendation.

Chairman Ludwig asked if an interim decision can be made subject to further discussion next month. **Mr. Bishop** said the rule allows the commissioners to put any conditions on this. They could grant a variance for 3 percent if they so wish, or grant a variance based on the organization getting a reduction on their rent, for example.

Commissioner Forrest moved to accept the staff's recommendation subject to review next month in light of any further developments or consideration by the staff, or if the organization finds that there is some hidden trap in this and then it could be re-looked at. This should meet their needs and give them an opportunity to succeed, which is what the Commission hopes. **Commissioner McLaughlin** seconded the motion and said Whatcom County desperately needs these services. She's watched through the years all the human service agencies and government services go down, down, down. They should have every opportunity to maintain what they have. It is her pleasure to second this motion. **Chairman Ludwig** asked if that includes operating under a 2 percent variance; **Commissioners McLaughlin** and **Forrest** agreed. **Chairman Ludwig** clarified the motion as being to lower the bingo license class from Class "H" to Class "G" with the understanding that it can be reviewed again next month based on any further information from the staff or the licensee.

Commissioner Herbold said her questions should not be heard as criticism of the programs because she thinks they are wonderful programs, but she is just concerned about the situation the organization finds itself in and over which it has little control. Those external forces are going to continue to be there, so it would be a good idea for the organization to continue looking for alternate sources of revenue. Any other way of tapping the generous spirit of the community in the event that bingo does not work in the future would be a good idea.

Chairman Ludwig said Commissioner Herbold speaks for the Commission when she praises the good works of this group. His other concern is that British Columbia will be getting slot machines soon. By letting the

organization operate bingo at a Class "G" will give the Commission time to consider that and make some further decisions to help the industry keep operating as it should.

Commissioner McLaughlin asked if there could be a friendly amendment with regard to coming back before the Commission. October doesn't give them much time to assess the impacts. She suggested adding, "or any other further time as needed" until it is known whether they can operate at Class "G" or "H." **Commissioner Forrest** said he thinks the Commission has that authority anyway. **Chairman Ludwig** concurred.

Vote taken; motion carried with four aye votes.

Mr. Taylor thanked the Commission for its understanding.

Commissioner Herbold asked what the map is on the table. **Chairman Ludwig** said that is a map to a licensee establishment called the Riverside Inn, where a reception is being hosted for Director Miller from 4 to 6 p.m.

Chairman Ludwig said there is no executive session. Tomorrow's meeting will begin at 9:30 a.m.

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING FRIDAY, SEPTEMBER 12, 1997

Chairman Ludwig called the meeting to order at 9:30 a.m. at the Holiday Inn, SeaTac, Washington. He introduced the WSGC staff and Commission members at the head table.

MEMBERS PRESENT: CURTIS LUDWIG, Chairman; LIZ McLAUGHLIN, Vice Chair; MARSHALL FORREST and PATRICIA L. HERBOLD; and Ex Officio Members SENATOR MARGARITA PRENTICE, REPRESENTATIVE RUTH FISHER, and SENATOR RAY SCHOW

OTHERS PRESENT: FRANK L. MILLER, Director; BEN BISHOP, Deputy Director; SHERRI WINSLOW, Assistant Director, Field Operations; CARRIE TELLEFSON, Special Assistant, Public Affairs; JULIE MASS, Manufacturer Coordinator, Field Operations; JONATHAN McCOY, Assistant Attorney General; and SUSAN GREEN, Executive Assistant.

Chairman Ludwig introduced the head table. He said there may be a very short executive session this morning following this meeting.

Chairman Ludwig reported that, by letter from the Washington State Lottery, the Commission has received word that they are withdrawing any discussions or research or development of an on-line bingo.

APPROVAL OF THE MINUTES FROM THE AUGUST 13-14, 1997, MEETINGS

Commissioner McLaughlin moved to approve **Commissioner Herbold** seconded the motion. *Vote taken; motion carried with four aye votes.* **Chairman Ludwig** said the minutes are approved.

RULES

MANUFACTURER and DISTRIBUTOR CREDIT/PRICING

New Section WAC 230-12-320 – Manufacture and distribution of gambling equipment and services – Prohibited practices—Gifts, promotional activities, and loans – Exceptions.

New Section WAC 230-230-12-330 – Availability of gambling equipment and related products and services—Prices—Contracts --Discounts—Restrictions—Exceptions

New Section WAC 230-12-340 – Sale of gambling devices, equipment, supplies, paraphernalia, and related services—Credit prohibited—Exceptions.

New Section WAC 230-12-350 – Use of checks to purchase gambling equipment, products, and services—Restrictions

Repealed Section WAC 230-12-200 – Prohibited practices—Contracts—Gifts—Rebates, etc.

Repealed Section WAC 230-30-200 – Punchboard and pull tab business restrictions.

Ms. Tellefson said these rules are up for final action today. Changes from last month include, under section one, under the definition of gift or promotional activities. Trade account terms was specifically listed as something that is allowed under this section of rules. Under section 4 (a) (I), "Manufacturer's Promotional Items to Distributors" are limited to \$25 per item as opposed to \$35. Then there is \$1,000 per year limit put on these activities as the

result of comments from last month's commission meetings and this is the entertainment issue.

Commissioner Herbold asked if it is possible to have amendments to shade or underline the new part and cross out the old part. She said it is so hard to look back and forth and find out where the changes are. **Ms. Tellefson** said Deputy Director Bishop had some copies with him. He passed them out to the commissioners at this time. **Chairman Ludwig** said shading would be all right, but crossing out or underlining is what they do when they just amend an existing rule and that would be confusing. **Ms. Tellefson** said that what Deputy Director Bishop was handing out to them will show the commissioners what the differences are between versions but when they are dealing with new sections, typically, they would not find any marks in the section because it is a brand new rule, which is what makes it difficult to tell what is new from the last month.

Commissioner Herbold asked if it would be possible when they are amending a new section to shade the part that is different from last month. She said she feels she must read both of them to find out where the differences are. **Ms. Tellefson** said they could do that for discussion purposes.

Mr. Bishop explained that the copies he just handed out had a single underline, which is the change from what was on the agenda last month. Double underlines are things that have occurred after they got it back from the code reviser. Things they have agreed to or think are appropriate that were not in the code reviser's copy that they had in their agenda have been double underlined.

Ms. Tellefson said that WAC 230-12-330 regarding pricing, discounts, and availability of gambling products. In section 1, a housekeeping change, the word "criterion" was changed to "criteria." In section 1(a) there is a change regarding when prices are established and available and the term "reviewed by the Commission and customers" was substituted for "every licensee's...". In Section B, "separate and different price schedules established by manufacturers and distributors for transactions conducted with licensees at different marketing levels, when such prices are progressively lower at each marketing level above the operator...", that last language is new and it is the caveat to what is acceptable for different schedules at different marketing levels. In Section 1(d), "Sales by manufacturers or distributors" are defined "for purposes of this section licensees are deemed to have been afforded the opportunity to participate when..." and that whole section below has been restructured to state that "when prices are posted at the sales outlets or provided to the customers by their sales representative" if they do not happen to go to the sales outlet. Section 2 is an issue that has been up for discussion and debate. This is the issue of exclusive contracts with a restriction or prohibition against exclusive contracts. There is a general proviso or exception to that prohibition in Section 2. In section 2B, there is also a more specific exception to that proviso and staff is requesting that from Section 2B starting with the word "provided", that that section be deleted where it says "provided that a manufacturer may offer for sale in the state of Washington...".

Commissioner McLaughlin asked why. **Ms. Tellefson** said that staff felt that was not necessary in light of the language above and then the Deputy Director Bishop and she have been working on changes to the language above in light of comments from Commissioner Forrest.

Commissioner Forrest said he had been concerned that the exemption was too broad and unnecessary, but Ben Bishop had explained to him a particular situation between two manufacturers where it would appear that some recognition of this maybe should be in the rule. He thinks they are just a few words away from being in agreement, but maybe they should work on it later because it is a little difficult to do off the cuff. In essence, if it would apply he would have no more concerns. If it applies to two manufacturers giving one an exclusive right to deal in the state of Washington, he wants to protect manufacturers and operators from exclusive deals where one of them would have an advantage against the others.

Mr. Bishop read language that he had been working on which said, "Provided that holders of proprietary rights gained through patents ... or by courts shall be allowed to enter into license agreements with licensed manufacturers that allow restrictive ability to manufacture or distribute products or services." He said that would limit the ability to have that exclusive only with a licensed manufacturer.

Commissioner Herbold asked if he was referring to as a "holder of." **Mr. Bishop** said that the holders would be the first party that has a patent. It could be maybe another license manufacturer or it could be an individual that

has gone out and has a scheme and typically, that is what comes to the Commission staff – someone that has an idea – they go to a manufacturer and say, “you’ve got the means to put my idea to reality; I will sell it to you but I want to reserve the rights for the other 49 states.” That has caused problems with the rules in the past because the current rule allows no exclusive contracts.

Commissioner Herbold said in that case that’s the exception-- there could be an exclusive contract if the manufacturer itself kept the patent or copyright, it could or could not do exclusive contracts. **Mr. Bishop** said that would be only with another manufacturer, then going down to the distributor-operator level there would be no exclusivity. **Commissioner Herbold** said a manufacturer who held a patent on a device would have to sell to all distributors; it could not only sell to one. **Mr. Bishop** said that was correct. The ending caveat to the rule is if all other requirements of this section are met, (and in another part of this section it says if they sell to one distributor they must sell to all distributors; if they sell to one operator, they must sell to all operators.) They can elect to skip a level if they wish, but if they sell to one at any level, they must sell to any of them.

Commissioner Herbold said she thought she understood what he was saying, but she was wondering why that was for the Commission to get into. She thought maybe someone could explain that to her later.

Ms. Tellefson went into the prohibition on contracts or exclusive agreements based on geographic area and said there are a couple of exceptions, one is between license manufacturers and their representatives, the other is between operators and gambling service supplies based on geographic areas. In item 3 (C), which is WAC 230-12-340, the issue primarily relating to credit and the changes from last month were minimal. The term “prescribed time period” the date was changed from October 1 to January 1, 1998 and references were changed -- instead of 60 or 90 days -- to insert the actual dates by which payment must be made in full. The staff is requesting one minor change to the title of the rule. The title is inconsistent with the introductory language. The term “sale of gambling devices, equipment, supplies and paraphernalia and related services” staff proposes, after input from Jon McCoy, that the title should read “sale of gambling equipment, devices, related supplies paraphernalia and related services...” et cetera, which is for Jon McCoy to figure out.

Mr. McCoy said his concern was with term “gambling device,” which is a specifically-defined term and that is not what this section is about. It gives the wrong impression if you have it that way and it is also inconsistent with the language that follows. There are other devices that are gambling equipment that are not technically gambling devices.

Ms. Tellefson said another minor change was to the word “debtee” which is used on pages 2 and 4. The staff would like to change that to the word “creditor.”

Commissioner Herbold asked if it would be changed in 9 (f) as well. **Ms. Tellefson** said the concern was just with the term “debtee” not with “debtor.” **Commissioner Herbold** asked if this was a debtor that they were referring to. **Ms. Tellefson** said that would be a creditor. **Commissioner Herbold** asked if the person who owes the debt shall immediately notify the Commission. **Ms. Tellefson** said she guessed that that would be a creditor. **Director Miller** saying that the intent was the manufacturer and distributor. He said that should be changed to be consistent with whatever else is being changed. **Ms. Tellefson** said those were the only changes to item 3(c) and there were no changes to item 3 (d). She said she knows there are quite a few people here to testify, particularly attorney, Steve Durkey, who would like to testify on these issues.

Commissioner McLaughlin asked if someone should answer Commissioner Herbold’s question prior to public comment. **Ms. Tellefson** said that her question on the exclusivity issue is a philosophical debate and the question will have to be resolved before the package can be adopted.

Director Miller said it gives guidance to the staff and gives them the ability to go forward and recognize changes in technology and what is happening in the market place. Three or four years ago, these issues did not come up. Now they are getting inundated with them and it just allows them to recognize it by rule. Under the old rule, there was absolute prohibition of all these things. And this creates that limited ability to recognize these legal rights between these manufacturers that maybe did not exist technically. He said he did not think it was a major shift, but it is a recognition. They still were not changing anything. When he brought before them a few months ago the machine, the pull tabs – that is gone – they did away with it, they do not need it, but this is more recognition of

legal rights and patents and the ability to preserve those, but still as far as distribution, once you start to sell to one distributor, it is open to everybody else – they are not changing that -- once you sell to one operator, you must sell to all. That is not being changed. He thinks without it these issues will come before the Commission. He thinks it clarifies some of the problems they have been dealing with.

Commissioner McLaughlin asked what is different about gaming industry products and any other product.

Director Miller said the Commission and staff were here to regulate an industry that needs regulation because it is gambling, because historically it is one that needs these controls. This area here – and he wants to speak just to this rule when comments were concluded -- to give you a little history which is important. The largest pull tab market in the world is in Washington State. This whole packet is designed really to preserve and protect that market and the distribution process. The question of exclusivity is if without it, if we do not have an exception there for these types of rights, he thinks they would be unintentionally excluding things that they do not necessarily want excluded in the future. That is where it becomes from a staff perspective very difficult. He said that had come a long way in this rule and did away with the real specifics and this, but it is an issue that will come before them over and over again. It does need to be referenced and this is not a bad way to solve the problem because it just doesn't recognize the legal rights. The Commission's staff is not really that much involved in it if they have the right – they just recognize it more.

Commissioner Herbold said her problem is not with the exception, but with the rule. She said that because she believes in free market and entrepreneurship, and believes in letting people contract with each other in accordance with general business practices and wonders why the Commission is saying you cannot limit who you sell to except in this exclusivity case. She said it seemed to her that there are statutes that deal with unfair business practices and antitrust laws, so why is the Commission interjecting themselves into the business practices of the manufacturers and distributors and operators? She said she sees the Commission's role as regulating the industry for the protection of the ultimate consumer.

Director Miller said he felt it was important to give some history on this rule. He said the whole credit rule had been on the books for a long time. The whole philosophy here is that operators must pay cash only to the distributors. Distributors to manufacturers there were no gifts, loans, or anything allowed, but credit had never been prohibited selling product. You could not buy influence such as drinks, flowers, or golf clubs. In 1973 rules were passed to keep corruption out. It was designed to keep business on a cash basis primarily with no control. It was not a free market system because gambling is not a free market. It is a highly regulated industry—probably the most regulated industry some would say next to nuclear waste.

Director Miller said that over the years and as this market has grown, distributors and the operators continued to have their cash basis. For the most part distributors and manufacturers have been on a cash basis. Four or five years ago some distributors asked the Commission to do away with this rule. They thought it was too hard to enforce from a staff perspective. Staff proposed to the Commission that they let them get the best price they could -- let the market control and get the Commission out of it because it was too costly for the agency to regulate. The Commission said they wanted to maintain control -- they did not want them to have free rein and a few people controlling the market. Many of the distributors came forward and said if that was done there would be five distributors in the state who would control the whole market.

Director Miller said that about three years ago without having the old rule on the book, they put out a memo saying they were going to enforce this issue. The big issue wasn't so much the credit, rather it was the same price and terms for all. After enforcing this the distributors came back and said the system was broken – it was not working. Everybody was being charged the same price in terms but what had happened was people were no longer paying their bills. Under this system the manufacturers hold huge sales -- buy this great deal now, they load up, and then they don't pay their bills or they pay a little bit at a time and there is no collection system to get it back. This ends up with a system where those who do not pay their bills get ahead of those who do which is unfair competition. Those that do not pay their bills are able to undercut the price against those who do.

Director Miller said they now have a very unfair system developing which is contrary to what the Commission wants to have -- a free market. There are a few who do not pay their bills having a tremendous advantage over those that are – they're living on the manufacturer's money. There may be no danger, but from Director Miller's perspective the danger is control, influence, the ability to put your product before someone else's product, the

ability to say you will put my product on the shelf and you will not show that product because you owe me this kind of money. Or it may be the ability of the distributors to say you'll give me these terms or I'm not going to pay you. Meanwhile the people who have paid their bills on time are coming to the Commission for help. Over the last two and a half years they have gone from a no debt system to a \$5 or \$6 million debt by a few. Enforcement was not the problem, it happened quickly and they were caught off guard. As the complaints began to mount it became a major issue over the last two years. They have been inundated with requests to help fix it because it was broken. This is the biggest market in the country but the pricing system in Washington State is archaic.

Director Miller said this whole package was an attempt to clean up the problem and establish some good business practices. They wanted to allow a reasonable amount of promotional items, set up the credit policy so it can be enforced. They would know what is expected, they would have time to get their debts paid off in about 5 years. They changed 30 days cash to 60 days which is reasonable compared to most. He said the Commission was getting involved in their business but they are getting some stability back into the system. Director Miller said that if it is not done -- and this is where the ultimate policy call comes to them-- if they choose not to get involved in this system, then he would encourage them to look at this whole process and ask if they should be involved at all in this except for who is licensed.

Director Miller said that, because it is very difficult for the staff to regulate it under the current rule, they need to know when these gifts or lines of credit that have been extended-- say they owe \$2 million-- become a gift or at what point are they a loan. Because there is no legal definition of that question, the Commission is weak from a legal standpoint and this creates instability in the industry without that knowledge. Pull tabs are the foundation for the industry in the state of Washington. A lot of distributors are asking for help but some want it tighter; others no regulation at all. It is an issue too fraught with disagreements and the agency may be facing lawsuits challenging these rules, but that should not matter because the issue must be resolved and the Commission must find out where their authority lies. This is a problem that 90 percent of the distributors who come to him and Deputy Bishop for help say it is broken and they should try to fix it.

Commissioner Forrest asked if the effect of this would be that all levels will operate under the same situation. The operator pays and he gets the product, so the upstream level will not be financing the downstream level. At the moment there is one exception in the sales to the distributor for the manufacturer. Now, this floating, unexamined credit policy, is another way of having a different price.

Director Miller said yes, that is what has happened. The advantage has been unfair from his perspective. This rule will solve this unfairness over time. It will be a gradual implementation. It gives people a chance to get their books in order and to adjust to a 60 day as opposed to a no-payment schedule. It will make some people change their business practices. But for the overall health of the industry this benefits many more people than it harms and those that it adversely impacts will have plenty of time to adjust their practices to make it work in this market.

Commissioner Herbold asked if the existing situation would have any detrimental effect on the ultimate consumer -- the people who are gambling.

Director Miller said no, but it will have an impact on the operator who sells it and makes money. Right now they are paying a price probably a little lower because people have been able to cut the price down because they don't have to pay the debt and they float it and they can actually cut the price down quite a bit. He said he thought part of their mission was beyond the player. It is also the public at large, which he thinks includes the whole process of distribution. If the distribution process is harmed, ultimately he thinks the player could be harmed, the operator, the charities, the tavern owners. It starts there in the sale of pull tabs. So they may be indirectly impacted over the long term, but right now, the answer is no.

Chairman Ludwig said his question goes to the influence that Director Miller mentioned as opposed to whether a business transaction is fair or unfair. A lot of business transactions are probably unfair, but he wanted to know if at present someone who has a manufacturer license could act also as a distributor or an operator.

Director Miller said that under the current rule they have different marketing level prohibitions. But a manufacturer can be a distributor. **Chairman Ludwig** asked if a distributor or a manufacturer could be an operator. **Director Miller** said that under the current rules the answer was no. **Chairman Ludwig** said what he

understood Director Miller to say was the influence if a manufacturer or a distributor has a credit arrangement, they could dictate what the operator was doing because of the debt that is owed.

Director Miller said that a manufacturer would have influence over a distributor. They have no influence over operators today because there is no debt allowed between distributor and operator. People will argue what evidence is there of influence. What the staff is trying to do is avoid that problem because part of their mission is to preserve the process and the integrity of this whole industry which starts from the manufacturer down to the ultimate consumer. The Commission has many different roles and many hats to play. The time has come to fix the problem or to change policy and do away with it and allow, then, the free market system to dictate it. There is no middle ground. These rules give the staff guidelines; they are fair; they give the distributor guidelines; they give the manufacturers guidelines to know what they can and cannot do in Washington State anymore. That is where they are facing a hard time – it is so broadly written. He believes it is healthier having 25 distributors selling product than three or four.

Chairman Ludwig announced that Senator Schow arrived sometime during this discussion after he had made his introductions.

Senator Schow asked how many manufacturers there are now. **Director Miller** said there are 13 or 14 nationally; distributors around 33 today.

Commissioner McLaughlin asked if she is reading correctly that if the manufacturer is owed by the distributor a large sum of money, they still only have 60 days to pay it back. **Director Miller** said no. If they currently owe large amounts from past due debts, then they will enter into notes and have a period of time in which to pay that back. Some disagree with that, but to do that simply puts people out of business – that was not their mission. The mission was to find a solution. All new purchases must be paid within a period of time down to 60 days. If they don't pay their debt, then eventually they will be cut off and go to a cash-only basis and more limitations will be placed on them. The past debt will be paid off over a period of time.

Mr. Bishop said that it was elective – it was not a forced debt or promissory note -- but in reality, the manufacturers that have the level of debt owed to them today would force these people into bankruptcy if they did not accept promissory notes.

Director Miller said the Commission did not create the problem, but they probably should have addressed it earlier. **Mr. Bishop** said the staff did not attempt to change the Commission's policy. The issue of whether free enterprise should go forward or that the whole change should be regulated continues. What they have tried to do was take the policy issue that has been in place since 1973 and make it workable because it had become in the 1997 environment unworkable. If they are going to change the policy then they would probably need to repeal all of the rules having to do with it and not pass these proposed rules.

Chairman Ludwig called for public comment. This is on for final adoption today so if the Commission takes final action this would be the last chance anyone has to speak to the issue.

Steve Durkey, representing Tabs Unlimited, said he has been asked to speak on behalf of Darrell Curtis and some other distributors who will be affected if this credit arrangement becomes law. He has submitted memoranda to the Commission and the staff with regard to their concerns and he said the only response they received was a brief acknowledgement that one of the memoranda had been received. He said that for Tabs Unlimited and other distributors like them this is not simply a matter of reforming business practices – these changes will affect the financial life or death of Tabs Unlimited and other smaller distributors. He said he was specifically referring to section 340 which is the section which prohibits credit generally and requires transactions involving the sale of gambling devices (although this may now have been amended to include other types of gambling materials) including pull tabs to be on a cash basis. They have no objection to subsection 320, 330 or 350, which are also identified as proposals for final action today. They realize that subsection 340 includes a reference to trade accounts, but they believe that based on the enabling statute for the Commission specifically RCW 9.46.010 and the current WAC and the factual basis as they understand it for these revisions do not support either 1) eliminating credit, or creating the so-called trade account which imposes an express, in their opinion, one size fits all credit program and limits in payment for all purchasers.

Mr. Durkey said that by disrupting the current credit practices between private businesses using private funds, the Commission will force certain start-up and small and even mid-size businesses out of business. So the goal will be less competition, increasing prices, and strengthen the already few and dominant distributors and create an abuse in the market. For example, with regard to the note arrangement in subsection 340, in effect changes the terms of a purchase. This creates due process problems. They do not dispute that the Commission has the authority to regulate gambling. What they object to is the Commission and perhaps the staff regulating private business day-to-day practices with regard to credit and how business is conducted. He and those he represents believe those are separate propositions. Regulating gambling is one thing; regulating routine business practices in a private economy with private money is something the enabling statute for the Commission allows. The purpose of the Commission is to license and tax and to take action to prohibit criminal conduct. None of that to their knowledge has been alleged as the basis for these revisions.

Director Miller said they had repeatedly asked for proof and we don't want to get into that, or we want to nip this problem before it goes any further. He said proof was the problem; it must be shown what it is that should be corrected; it must be demonstrated to distributors that there is a real problem and show the audit results, the facts rather than occasional distributors who may say one thing for their own purposes because credit no longer is a problem for them. He said they think it is ironic that some of the distributors who used credit in a significant way in the past to their advantage and no longer need it because of their size in the market, now think that credit is a bad idea and think it should be ended before other businesses coming after them wanting to use credit to succeed and then compete against them.

Mr. Durkey said the context for Mr. Curtis's concerns began September 20, 1996, when the deputy director asked all manufacturers to advise the Commission of credit problems, specifically cases of distributors who had failed to keep trade accounts current. He said he thought this was consistent with Commissioner Herbold's question. Why is the Commission concerning itself with whether certain distributors are slow in making payment or paying their bills. In every other business a creditor has a great array of pre-sale options to assure payment. They get personal guarantees of collateral as security. There are a number of things to do before selling to assure payment. He does not understand why the Commission wants to be involved in the collection business and who are they intending to protect? He said he and those he represents think it is a select group of distributors.

Mr. Durkey said the current WAC 230-12-202 addresses credit and it provides that discounts may be offered if non-discriminatory and offered to all. He said there has been concern about a loan being really credit or a credit is a loan. A loan is an actual advance of cash – this is a legal definition. Credit is an arrangement whereby purchases are made with an agreement to make future payments to pay for those purchases. One is the actual advance of cash; the other is the purchase of materials with an agreement to pay for those materials over time. In other sections in the WAC credit and gifts and loans are all referred to differently. So if in section 12-200 the Commission had intended to make a distinction with regard to credit, meaning no credit is allowed, they would have said so because they made that distinction in other WAC sections. The licensed manufacturers or distributors must sell their items on the same terms for all on the same conditions. There is an existing prohibition against the alleged abuses. More law is not the solution to address a problem which has never been supported with any publication of an audit or the results of this inquiry to the manufacturers. So rather than enforce which they have, the answer apparently is more and stricter requirements with regard to credit and reporting and the impact on licensing – that goes beyond regulating gambling. It regulates routine business practices in the private sector using private money. If a manufacturer does not take the steps to protect itself with regard to collecting a debt, he wondered why that would be the Commission's responsibility. If they don't get personal guarantees or collateral or take steps to secure the debt, he believes it is not the responsibility of the government and the Commission to step in and say they will take care of it. The enabling statute for the Commission provides anything directly or indirectly for that authority.

Mr. Durkey said the guidance could be found in WAC 230-12-200 where it is provided that the price for selling supplies shall be in conformity with the open market price in the locality where sold, the terms of such sale shall be those based upon those normally granted in accordance with customary business practices in the locality where sold. If someone is going to sell materials in Spokane, Yakima or Seattle, they should look to the locale – and let the private market and the private sector decide appropriate credit arrangements for interest and terms.

That was the purpose of that provision and somehow that notion the private enterprise being in a position to regulate itself to decide who pays and who doesn't and not to sell to those who don't pay was established in the WAC by that express provision. So if there were a problem with credit and response to this September 20 inquiry or gifts or other terms, the law as it presently exists allows for the Commission to take action and maybe suspend those who are in violation of the existing law.

Mr. Durkey said he presumes that the deputy director received some responses to his September 20 inquiry to these manufacturers, but those results were never made known. Whatever information supports these drastic revisions – eliminating credit, imposing a new term for previous credit after the deal has been made – none of the factual support for that has ever been disclosed. Mr. Curtis and he have asked for that repeatedly and wonder if there is a summary or an audit. He wanted to know where the support was for doing what was requested.

Director Miller asked how much was owed in state right now.

Mr. Bishop said \$7 million is outstanding and to his knowledge Mr. Curtis had never asked for any figures. If he thinks he did, Mr. Bishop said he would be glad to go back and check for all other disclosures.

Mr. Durkey asked if an audit had been done. He said at one time he thought the staff's concern was insufficient collateral with these materials to support the debt. If a distributor has \$200,000 worth of manufacturer's materials and the debt is \$50,000, he asked if the context of the collateral -- the amount that is being held by the distributor -- offset Director Miller's concern. He has the collateral if the manufacturer decides to declare him in default on the purchase terms and simply take back his materials. That is what is done in the private sectors whether it is tires or anything else. If merchandise is not paid for, there is a security agreement that allows the seller to take it back. He thinks an audit should be done to confirm whether the inventory is adequate to protect the debt.

Chairman Ludwig asked a hypothetical question of Mr. Durkey saying if he (Chairman Ludwig) had a security agreement there would probably be options to take the security back or to collect the debt and he is sure if that were stale inventory Mr. Durkey would try to collect the debt. But more basic than that is if he (Chairman Ludwig) were a distributor, customers of Tabs Unlimited, and he owes \$1 or 2 million, Mr. Durkey would not want Chairman Ludwig to buy anything from any other manufacturer when Mr. Durkey had been that generous to him.

Mr. Durkey said that would be up to him. He said he sees purchasers of materials in the construction industry go to another supplier and if the second supplier agrees but has a different arrangement – for example to be paid in 30 days at 12 percent and a personal guarantee and a deed of trust on his house. He wondered why it was the responsibility of the guy who got stiffed the first time to make sure that the guy who stiffed him does not do that to one of his competitors.

Chairman Ludwig said he was not talking about that. He said that if he were Tabs Unlimited and a customer that he had been very generous to in extending credit started doing business with somebody else to his detriment, he would go after him for the \$2 million he owed immediately.

Director Miller said Mr. Durkey's client gets money up front from his customers – the bulk of his business – what is wrong with paying his debt off in 60 days? He's getting cash.

Mr. Durkey said the problem is that you have given the manufacturer with that proposal the latitude to impose terms knowing that if Tabs Unlimited doesn't accept those terms then Tabs Unlimited's only recourse is C. O. D. so you either pay me up front or you pay me in 60 days on my terms. So it is no longer negotiated because the manufacturer, based on the proposed WAC dictates the terms to the buyer.

Director Miller said he keeps hearing Mr. Durkey refer to the audit and the investigation. He said that perhaps he was not clear in his presentation, but he talked about potentials and stopping a potential problem before it exists which has been the staff's philosophy. He asked him if he does not believe the Commission has the authority or the obligation to try to preclude undue influence, manipulation and those types of things in the distribution of that product – does he not believe that is within the Commission's authority.

Mr. Durkey said he believes the Commission already has that authority which set out in the current WAC. They have provision that deals with discriminatory practices on the part of manufacturers; they have a prohibition against gifts and against loans. There is no prohibition against credit. He thinks the Commission knows full well, even going back to Mr. Bishop's letter of September 20, that credit was a standard practice in the industry. A second letter in December by Mr. Bishop confirmed that. They knew credit existed out there because it wasn't prohibited.

Director Miller said there may be a dispute on that issue. He thinks credit is permitted in the manufacturer-distributor level. He asked at what point does credit become a loan or a gift. At what point when it is not paid and just sits out there and does not become a loan or a gift.

Mr. Durkey said if he sells materials to a company and they don't pay it and I decide that they are a big customer and I don't want to make them mad so I'm not going to do anything about it – well then that is a gift and there is a WAC provision that already deals with that. He said if sells something and they don't pay he is not going to let them off the hook – they are already a deadbeat and he would sue them. And if they stiff somebody else, that's there problem.

Mr. McCoy pointed out that there is specific statutory authority that gives the Commission authority to regulate in this area. He said there was an argument being made that it was beyond Commission's authority and that it would be beyond the Commission's responsibility to regulate business practices. RCW 9.46.070 (11) specifically says that it is the responsibility of the Commission to regulate and establish the type and scope and the manner of conducting activities authorized under the chapter. That includes the sale of gambling equipment, material, etc. That has always been in the purview of the Gambling Commission. He said that from an historical perspective, when the Gambling Act was passed in 1973, this rule was passed almost immediately after that and the reason was that because historically influence within the industry and the industries that were also included in the Act including pinball games and there were a lot of scandals that had occurred because of the vertical monopoly problem that the manufacturer dictated the terms to the people who were below them. So the rules were set up to segregate very early on those operating levels. This issue addresses that concept and the question that is being debated here and both side have said they want to keep a free market – the question here is which keeps the market freer – is it allowing free market which will allow the creation of monopolies -- that is really the concern that is going here in terms of what the rules are addressing is keeping that market open as opposed to allowing it to be devolved to four or five manufacturers and that is where the evil, if you will, comes into play is when a few individuals control the whole market. That was the evil that was addressed when the rules were set up initially was the control issue and what these rules are addressing but the main thing is that it is clearly within the Gambling Commission's purview to regulate these kinds of transactions between people within the industry.

Mr. Durkey said he disagrees and said that if they looked at RCW 9.46.010 it says by legislative declaration, the public policy is to keep the criminal element out of gambling and to promote the social welfare of people by limiting the nature and scope of gambling as it relates to the risk of criminal activity. **Mr. McCoy** said it also says by strict regulation and control. **Mr. Durkey** said that was intended to refer to gambling – not business practices. **Mr. McCoy** said no it was with regard to gambling activities.

Commissioner Forrest said that, on the legal issue, the Commission's counsel said it is his opinion that the Commission has the authority. He said there was a simple remedy – if the Commission does it and they don't like it, then let the courts tell them they can't do it. He said the legal issue should not be debated any further.

Director Miller said with reference to other distributors, that the agency had received for the most part almost total support of the concept, and some would have liked it to be more strict. He asked who else Mr. Durkey was representing so that he knows who is opposing this. **Mr. Durkey** said Tabs Plus, Rainbow Distributing and Target Distributing have advised Mr. Curtis that they share his concerns with regard to this credit limitation.

Mr. Durkey said he wanted to address the minutes of the last meeting on May 9 with regard to the Commission's comments and their concerns with regard to this proposal. He said they had read them carefully and one was that if credit is not paid, it is a gift. He said they agree with that and it is already prohibited and there is an existing law that would allow for the enforcement of that. They think the issue was best summarized by Judge Heavey at

the last Commission meeting when he asked what the Commission was trying to do. If it is regulating business practices, he believed that the support was not there as it relates to the routine day-to-day business activities of private enterprise. If it is with regard to gambling, that is a different matter and they clearly have the authority to do that.

Mr. Durkey said he has the group he represents think the whole movement is distributor driven by those at this point in their business career who would benefit by reducing competition by not allowing other businesses the benefit of the same credit arrangements they had. His groups thinks it is anti-competitive. They think it will restrict competition in the market place and that seems to them to inconsistent with the enabling statute that is intended to protect the public. Finally, there are some due process issues. The point is that they have the current authority to enforce the concerns as they have been identified and it does not seem to them that the answer is more law but enforcement of what they have and there are going to be businesses affected by this credit revision in that there will be less negotiating between distributors and manufacturers and to do that will inure to the detriment of those distributors.

Chairman Ludwig called for a five minute recess at 10:45 a.m

***** RECESS *****

Chairman Ludwig called the meeting back to order at 10:50 a.m. He called for others who wanted to comment.

Pam Perri, executive director of the National Association of Fundraising Ticket Manufacturers, said the commissioners have a copy of NAFTM's most recent report. She pointed out that one of the charities that they highlight is from Renton, Washington. The Imperials Music and Youth Organization. She is representing about 70 percent of the pull tab manufacturers' market – American Games, Air International, Douglas Press, Stern Entertainment and Trade Products. She said they appreciate the Commission staff for taking into account some of the manufacturer's perspectives on this credit rule. She said that NAFTM believes that the rule makes sense, particularly considering the volume of product that goes through this state. Other states that have comparable volume such as Minnesota, Texas and Nebraska all have not only regulations that restrict free trade practice but also credit rules. She hopes they will take that into account as they consider this.

Don Harrison said his is the newest and smallest distributor business in the state. He says he agrees with the new rules. His experience as a newcomer was to have a license for 22 days and it took almost six weeks before he got his first game and then only because Mr. Bishop and Ms. Mass pressured the manufacturers who were not going to sell him any games. He said everything he has to buy is cash and he said that if he can pay cash up front before receiving any games, that the other distributors should be able to pay up within 30 days. He thinks 60 days is too long – that if he can do it, other distributors should be able to do it or get out of the business.

Marco Courones, American Pull Tab, said he is in the middle. He said he liked what Mr. Durkey said but he said the industry is really, really sick and the distributor level is corrupted; it is hard to compete when somebody is getting money under a table –he has brought this up before—and that particular person got a small fine, so he agrees he should be out of business. The industry cannot survive making 49 to 79 cents a game. He said he pays health benefits, supplies gas, maintain warehouses. They are almost the largest distributor in the state. They have high overhead and what has created this enormous debt is that they are trying to compete with distributors that are getting unfair deals. As far as manufacturers controlling their warehouses, he does not really believe that. They do not control his and he owes them a lot more money than most people here do. He put up a shopping center and property downtown as a security deposit. If he does not have the inventory, he has the real estate. He supports the proposed 60 months to pay back debt. He wants an open policy. If he could borrow \$12 million worth of product, that is debt. The debt structure is not the problem.

Mr. Courones said the problem is corruption and it was passed by with a token fine. He feels that he is entitled to a fair profit and he can't get a fair profit if he has somebody getting money someplace else. This is the problem that has happened in the distributorship business and it goes back 10 years. He said it took 17 years to get here; five years is plenty to correct it providing it is corrected. Everyone makes mistakes. He said he recently was fined \$14,000 for making an honest mistake on an invoice. And somebody else does corruption and gets a \$20,000 fine. He said something is wrong there. He is all for the free enterprise system. If he wants to go \$15

million in debt and the manufacturers want to give it to him, they should be able to give it to any other distributor that has the guts to go in debt. They should not be restricted. He said he had been cut off by manufacturers who said he had to send \$5,000 or his product was on the porch.

Mr. Courones said that as far as the manufacturer controlling the distributor and forcing a small manufacturer out of business, he said that was impossible. The smaller manufacturers have their own missionaries and they go out to the retail accounts and they sell their games and it works quite nice right down to the smallest manufacturer. He said they had a manufacturer tell him that he can't buy these games unless I buy these games. So they don't get the games because they have to create some kind of integrity. It is not the credit terms that have created this problem. If he has the guts to go \$15 million in debt, they sell \$27,000 sets of pull tabs a month. There is about \$5,000 sets of pull tabs that are available. If you multiply that times above \$30 and you come up with \$3 to \$4 million worth of inventory you have to have if you want to compete. He feels that it has been corrupted; it is being fixed; he thinks no one has been working harder on this than Mr. Miller and Mr. Bishop, but it has a long ways to go.

Commissioner McLaughlin asked which side he is on, **Mr. Courones** said he is on the side of free enterprise, but he can live with 60 months. **Commissioner McLaughlin** said then he was supporting this rule and its amendments. **Mr. Courones** said he could live with the rule but they would have to sharpen their pencil. He said that when they have 5,000 games available and they try to take care of everybody, it is difficult. Just the other day they dropped 16 games out their inventory. Two days later they were asked for 11 of them back. The manufacturer has got to help and stop creating so many new games.

Mr. Bishop asked how Mr. Courones would feel if every time he was unable to meet the terms of a purchase, what would he think if they charged him with accepting a gift. **Mr. Courones** said he did not have the legalities readily in his mind, but he did not think that was accepting a gift. He said that if he is signed personally with a security agreement he has a lot more to lose than that manufacturer does. **Mr. Bishop** asked him at what point then does getting interest-free financing then become a gift. **Mr. Courones** said that he could only tell him that he did not feel that was his job. **Mr. Bishop** said he was just saying that is the current rule. **Mr. Courones** said they would then just have to live with the current rule because something has to be done. If they have to start there then so be it.

Commissioner Herbold said she was also confused about which side Mr. Courones is on, but she heard him say he not concerned about the debt that is out there and the extension of credit that has been going on, but he is talking about corruption and money under the table – all of those things are prohibited by the current regulations. She asked if he was really saying that they need stronger enforcement, tougher fines, to discourage corruption or is he saying that this credit is a problem or is not a problem. **Mr. Courones** said he doesn't think credit is a problem, but he thinks what is happening is some manufacturers are issuing credit one way or the other to some distributors where they can honestly lower their prices which creates this pricing problem out there and the Commission has discovered it.

Commissioner Herbold said those things that are already covered by the rules could be dealt with by the Commission and by the staff without having to deal with that existing debt out there and let the manufacturers and distributors work that out in a contractual manner. **Mr. Courones** said that if a manufacturer offers him to buy 1,000 to 2,000 cases that is a large debt. That is maybe \$100,000. And he needs all 60 days to pay for that. By the same token, he is warehousing a lot of product and going into major debt. If another distributor wishes to do the same thing, he should be able to do it. Maybe the sale should be scaled down one way or the other, but he does not think that a big distributor should be punished for working pretty hard.

Commissioner Herbold asked, if their goal is to deal with the existing debt and set the terms for these promissory notes and to regulate their business practices to that extent, then why doesn't the Commission say that the interest rate has to be at a market rate. She wondered why they were allowing them "interest, if any is being charged," because in her view then it is saying it is kind of close to a gift if there is no interest being charged. It seemed to her that if they are going to establish these specifics that they would say ordinary business practice requires some interest. **Mr. Courones** said the interest rate would break him.

Director Miller said that they had not intended to get that specific. It is just simply a matter of trying to find compromise within the industry. He said these rules were worked out over about a six to eight month period with 20 to 25 distributors coming to meetings and manufacturers having input in doing this and making comments. He said it was a compromise and he said he did not think they wanted to get that specific. Let them charge interest, but that is really not the agency's issue. They want the debt to be taken care of long term. They want to get stability back in pricing. They want to stop the corruption. He said it is tough to talk about corruption and he appreciates Mr. Courones' candor because if they find it they will stop it. Everybody talks about it, but a lot of people do not come and say here it is specifically. It is not that easy to go in and find the books and find an under-the-table payment. If they find kickbacks they will stop that. It may be a kickback in one person's opinion and he said there is a lot of animosity in this group between each other. He said this group is difficult to find any consensus among them because they do not always agree on issues and quite generally there is a lot of hostility about each other's businesses, so it makes it even tougher. When allegations are made about corruption, if the staff find the problem, they have always attempted to stop it, but it is a lot easier to talk about it than to find it. This whole process and this whole rules packet is one more attempt to maybe stop that from occurring in the future.

Commissioner Herbold asked if in the last five years the numbers of manufacturers and distributors have increased or decreased as the result of this debt. **Mr. Courones** said he thought it had increased for the distributor. **Commissioner Herbold** said that the current system is not shutting people out of the market, but rather expanding. **Mr. Courones** said they were expanding. He said their overhead is maybe the trunk of their car and four cases of games and that is fine if that is what they want to do.

Director Miller said they require them to make their product available to all, but manufacturers do have certain credit policies and they may have to establish a credit record before they can get credit. He said they do not want to stop those types of business practices.

Mr. Courones said his argument is that they are changing the rules now because some distributors are angry at me or whoever they want to compete with and all he is trying to do is what they did. They were out there and they were extended interest-free credit and they worked hard and they probably are more solvent than he is right now, but the thing is that now they have some competitors, like Mr. Curtis and himself, their ultimate goal is to put them out of business.

Commissioner Herbold said comments like that confuse her as to where he stands on this issue. **Mr. Courones** said it is so confusing and he wants them to know how frustrated he is. He said he was one of the distributors that came to Mr. Miller and asked for help to level the playing ground and he said he meant that from the smallest distributor to the largest distributor. He said the playing ground is that you can't change the rules where some distributors got quite wealthy under different rules then now they are going to change. The interest rate would hurt a lot of people.

Director Miller said he wanted to respond to what he thought might have been an allegation that they had done this to protect a few people. The big people did not come to him. Many of them said do away with it. They said they didn't need it. Make an open market. This was the result, for the most part to protect the smaller distributors who said this was unfair and a crazy system. He said there were a number of people in the room who came to his office to ask him to take a look at this. Over a long period of time, this whole thing began to develop after give and take and looking at the problem and putting it out and talking to manufacturers. They all flew in from all over the country to talk about this. In Minnesota, for example, it is strictly cash. They don't have this problem; they pay it right off. **Mr. Courones** said that in Minnesota they get a 10 percent rebate back at the end of the year. If they buy \$1 million worth of product from Trade products, they send them \$100,000 check. **Director Miller** said they are not stopping non discriminatory discounts. If you buy volume you can still get a volume discount. So if someone is bigger they have an advantage. They just want them to take that money you get from the operator and pass it through to the manufacturer – so they don't sit on it and have the ability to undercut your price against people that do pay and run their business in a more prudent fashion.

Mr. Courones said he basically supports the plan. **Director Miller** said it is a real call for the commissioners and whether they make a decision or not, this is one way to solve the problem or if they think it needs to be looked at then they have to get out of it except for certain things which are pricing. There must be fairness in the pricing

because that will destroy it. There are different solutions ultimately but the agency must use resources wisely. They just can't use their whole staff and looking at distributors all the time.

Clyde Bock, Mr. Ed's Bingo and Casino Supply, said he speaks on behalf of Ed Heming, the owner. He said Mr. Heming's first preference is that they would not be into the regulatory business at all in terms of private enterprise which means you would take out the provision that manufacturers must sell to all. That would be the first, open it up, take everything out. But if on one hand they are going to be into the business of saying that a manufacturer must sell to all distributors, then on the other hand these people that say they want that but on this hand we don't want the Commission to be able to tell them how they have to pay for that seems to him to be that if they are going to be in there at all, then be in there all the way and do something about it. Because what the system now allows for and he hopes he is not stepping on toes – it allows for a distributor to get so far in over their head that they can file bankruptcy; they can reorganize and the Commission demand that those same manufacturers must then resell product so that it can be done again. So if they are going to be into the process of regulating enterprise then be into it all the way not just on one side. This has happened time and again. Mr. Ed's is a large one; he's been in the business a long time, but he did not build his business on credit.

Commissioner McLaughlin said she could understand how the distributor can get in debt, but how do the manufacturers survive when they don't get any money. **Mr. Bock** said that is why some of them are missing. It is such a competitive business that no one is willing to take that threat of the loss of sales and so they keep extending and extending. Once a distributor reaches a certain level, there is no return. It cannot be made up. So it is just prolonging it. If they don't stop it from the beginning to keep it from happening, then they are going to keep having this occur over and again. Once they reach a certain level that your inventory turn is so slow and your debt load is so high, there is no recovery. He said if they were going to be on one side of it, he is asking them to be on the other side with equal enthusiasm.

Director Miller said it hurts the small manufacturer. The large manufacturers are into market share and they might be able to afford that flow than the smaller guy so consequently they get market share – this is the biggest market in the country by two and a half times volume. That market share that product exposure is worth a lot.

Chairman Ludwig asked what happens if the Commission doesn't take action at this meeting. **Ms. Tellefson** said the Commission has 180 days to take action before they must refile with the code reviser.

Jay Gerow, ZDI Gaming, said he agrees with the rules and supports the staff. He said there is problem out there. It needs a starting point because it just is not getting one at this point, it is just continuing on. At least this would be that point so they would be in full support of it.

Sherry Brown, said she is the other owner of Mr. Ed's Casino and Bingo Supply. She said they are in support of this. She said the industry is sick and she agrees with Director Miller that they must start somewhere. They don't agree with the total concept. There are things that Director Miller and they have argued about at great length; however, she said that in the spirit of compromise that they need to start somewhere. This is a good start. It does not mean that they cannot go back and amend and wordsmith and fix, but they support this as a good beginning.

Scott Johnson, Spokane Pull Tab and Bingo supply, said he has attended most of the meeting and he agrees with the last three speakers in that there is a problem in the industry. He agrees 100 percent with the staff on this issue.

Chairman Ludwig called for any further public comment; no one came forward.

Commissioner Herbold asked if there had been a problem with respect to the capital lease agreements. She wanted to know if this was a new section or had it already been in place at some point. **Mr. Bishop** said this had been carried forward from another rule and there is no change in the basic policy. Capital leases of items that cost \$1,000 more, strictly because that was credit or loans based upon a collateralized piece of equipment, but it is not new.

Commissioner Forrest said it seemed to him, that if the Commission were to continue in the general policies they had followed that this was a necessary step to make it effective. Several speakers had brought that up. He had not given a lot of thought to the idea of abolishing all of these controls and he is not very sympathetic to it, but he would be inclined to think that they should adopt this. Staff who work with it day by day will find that this will give them the tools they need. If someone externally or the Commission wanted to examine the whole policy of regulating business practices later then they could do so. He would like to do it in that context rather than just rejecting this rule on a broad policy ground. It seemed to him it was a broader policy than the rule. He encouraged the Commission to adopt the proposed rules which will give them some experience to see how they work and then in due course, if they need to re-examine the entire structure, they could do that with more leisure and with a little more briefing background and written materials before they acted.

Commissioner McLaughlin asked if he was going to make a motion and **Commissioner Forrest** said yes, and made the motion; **Commissioner McLaughlin** seconded it. **Chairman Ludwig** said it had been moved and seconded that the Commission adopt 3(a) through 3(f) as amended including Mr. Bishop's oral amendment to 3(b).

Commissioner Herbold said she shares Judge Forrest's thoughts. Her concern was with the underlying policy of how much regulation of business practices the Commission should get involved in. But as long as these existing rules were there and this serves to clean up some problems, she would vote for it, but she hopes to engage in a policy discussion at some later date as to how much regulation they should be involved with.

Chairman Ludwig said he shares Commissioner Herbold's concerns. He said this was a tough issue to walk that fine line between interfering with free market concepts but still maintaining control in order to avoid problems that have been suggested and presently exist according to of the speakers. He said he was impressed by the majority of people in the industry speaking in support of the rule and the fact that it is needed to avoid and correct problems.

Vote taken; motion carried with four aye votes.

PULL TAB RULE

Amendatory Section WAC 230-30-045 – Pull tab series with carry-over jackpots—Definitions--Requirement

Ms. Tellefson said this item is up for final adoption today. It is a new section that sets forth the standards for carry over jackpot pull tab games and Julie Mass, special agent, who works in this area has a short demonstration of this system. There is one change in the new subsection 6. When the rule was originally filed with the package on progressive pull tabs many months ago, there was a \$5 stamp fee involved. These types of pull tab games will involve a lot more regulation by their staff and a lot more involvement. They are a complicated system and so they need to have stamps on these pull tab sets. When they brought this rule back which is the cleaned-up version, there was no provision for stamp fee, but rather than a \$5 stamp fee, they are going to be asking for a \$1 stamp fee. She has discussed the issue with Mr. McCoy as to whether or not this would be a substantive change and he may wish to comment, but his initial comment was that he did not feel that it would be. The proposed language would read, "The fee charged for identification and inspection service stamps shall be set at \$1 for pull tab series with carry over jack pots." That would be a New Section, 6.

Julie Mass, Manufacturer Coordinator, explained how these games work. She said that in their handout packet number one, tab nine, there are five copies of flares labeled game #1 through #5. The way this game works is the minimum pay out percentage is 60 percent, meaning not including the carry-over jackpot, so it does meet the same standards as all other games. The carry over jackpot would add an additional percentage like maybe 3 percent or 5 percent, so the pay out if it were won would be like 65 percent on the game.

Commissioner Forrest asked if the jackpot is never won, 60 percent would still be paid out and if someone wins the jackpot, the percentage of pay out obviously goes up. **Ms. Mass** said that was correct and there is a provision in the rule that if they offer these types of games the carry over jackpot must be awarded, so it is guaranteed someone will win it at some point in time. They did set a \$2,000 cap on it so that it can't go higher than that. Once it reaches \$2,000, it continues to be carried over at \$2,000 and that does not affect the initial 60

percent on each of the games. The initial problem was that they were running into in developing this game.

Chairman Ludwig asked if the Commission had already looked at these flares at the Wenatchee meeting in August. **Ms. Mass** said yes, they had been presented at the last meeting. They just wanted to explain them to the public and the commissioners to make sure they all understood how this would work. She pointed out Flare #1 and she said Wes Fultz will present examples for them to see if they wished. She said on this game there is a pull tab ticket that says B1. If a player gets that ticket out of the game, they get a chance to open one of the 10 windows on the flare, so their chances are 1 in 10 of winning that jackpot. She demonstrated that in this game #1, the player opens the window #4 and they do not win, so the jackpot must then be carried over and then they add \$150, which is the contribution amount, they add it to \$150 for game #2 and that is where they see the \$300 jackpot in game #2. The player gets the ticket, opens window #2, they don't win, it goes to game #3. Same thing, they get B1 pull tab ticket, open window #8, they don't win – these are just random flares so they can see how it would carry over. They go to game #4 – they are now up to \$600 – they open window #6; they still don't win. They go to game #5 and someone was lucky enough to open window #1 and win the jackpot, so they get \$750. This is another incentive to get people to play pull tabs and another new type of prize that may help the industry. The operators actually came forward with this about a year ago wanting this type of game and they have worked on developing it. She said there is a minimum requirement of 25 different versions of flares so it said in there that they have to randomly place the winner.

Commissioner Herbold asked if the \$150 that is being carried over is an example. **Ms. Mass** said yes, it could be up to \$500. The reason they set \$500 is because that is the maximum prize allowed by WAC rules, and they had a discussion on whether to increase that but decided against going over that. She said she doubts they would see many games that have \$500 contributions because it would make the pay outs extremely high, maybe 80-90 percent. They would probably see more from \$100 to \$200.

Commissioner Herbold asked if they get up to the maximum of \$2,000 in the carry over jackpot and they don't open the right window, but on the other hand they have the obligation to pay the carry over jackpot, how do they do that if it just keeps going on and on and on. **Ms. Mass** said it remains at \$2,000 until it is won, so they may play 1,000 games if it keeps going on and on, but they have to award that \$2,000 eventually. She said Mr. Fultz at Bonanza has done bar graphs and ran 30,000 games through a computer to see how long it would take to award the jackpot and most of the time the jackpot was won within the first 30 games, so it did not go on forever.

Senator Schow asked if each time someone gets like in game #1 they get B1 they get \$50 and they get a chance at the big jackpot and they open up #4, don't win the jackpot, then there is a new card of 10. **Ms. Mass** said yes, and that was why it goes over the game #2 and #3. A whole new flare is put up and a whole new set of tickets is put up so the game is basically closed out and they go on to the next game. So it is a series of pull tab games. **Senator Schow** asked if the first ticket that came out was B1, then that game would be dead. **Ms. Mass** said it might or might not be – there would still be a lot of prizes on the flare – 60 percent to be paid out – so they could leave it in play. **Senator Schow** said but then they would not have the carry over working for them. **Ms. Mass** said it would just sit there until they decided to close the game and then they would close it and carry it over, but they could still play for the smaller prizes for however long they would want to play it.

Chairman Ludwig said that, in other words, there is only one B1 and everybody is going to know that they are not going to have another jackpot shot. **Ms. Mass** said that was correct; it wins plus one chance and they will probably require disclosure on the flare on this one that they have that says one winner or one chance to make it real clear that only one person gets to open one of the ten windows. She said they have another example of another type of flare which is an advance or bonus type flare where they get a chance to advance rather than a guaranteed ticket as in this game. It is just another way of playing this. They have written the rules to allow two or three methods of play on the same concept of a carry over jackpot. They will be reviewing and approving those as they come forward. She said this was the second example they have with the bonus or step-up section.

Dennis Zaborac, Totem Tab Services, asked for some clarification. He wanted to know when this one chance to win the top prize is opened, would the game be allowed to stay in and would they mark off the \$2,000 on top of the flare – say it is maximum prize. Are they going to expect the player to look at this one tab out of ten, look at a \$2,000 prize up there and maybe think that \$2,000 is still there in that game? **Director Miller** said that would have to appear if the jackpot reached that amount. **Mr. Bishop** said the \$2,000 prize would have to be marked

off. **Mr. Zaborac** said, so, when it is marked off and the game is still in play, the player will not know that the jackpot is building from that point; they will then think that the jackpot is in one, possibly. **Mr. Bishop** said it would not be available from this set is what they should know. **Director Miller** said that once that jackpot is gone that game is probably over.

Director Miller thanked Wes Fultz, Sue Schultz, and those companies for the work they did on this. This has been worked on for months to develop this type of game for the industry. He said Julie Mass and the others have worked tirelessly on this and he wanted thank them for doing a great job.

Chairman Ludwig called for any further public comment and noted that no one has opposed this. No one came forward. He said that in reference to the possible adoption of pull tab rule #4(a) he called for a motion.

Commissioner Herbold moved to adopt new section WAC 230-30-045, which is shown in item #4(a) of their materials. **Commissioner McLaughlin** seconded the motion.

Ms. Tellefson asked if the Chairman had confirmed that the new section would be added to the \$1 fee.

Chairman Ludwig added that it would include item #6 as explained by Ms. Tellefson. He said he thought that was the intent of the motion. **Commissioner Herbold** said that was what she intended.

Vote taken; motion carried with four aye votes.

BINGO RULES

Amendatory Section WAC 230-20-192 – Standards for disposable bingo cards—Definitions
Amendatory Section WAC 230-20-240 – Bingo Equipment to be used

Ms. Tellefson said these are two rules are up for final action today as well. They are housekeeping rules that have to do with keno bingo and they are exceptions to requirements of using preprinted bingo cards and staff recommends adoption. She said they were housekeeping rules.

Chairman Ludwig called for any questions or comments from the public. No one came forward.

Commissioner McLaughlin moved that item 5 A the amendatory section to WAC 230-20-192 be approved. **Commissioner Herbold** asked if these were going to be taken together. **Commissioner McLaughlin** restated her motion to include both items 5 A and 5 B amendatory sections to WAC 230-20-192 and 240. **Commissioner Herbold** seconded the restated motion. *Vote taken; motion carried with four aye votes.*

GAMBLING SERVICES SUPPLIER RULES

New Section WAC 230-02-205 – Gambling services supplier defined
New Section WAC 230-02-206 – Gambling services supplier representative defined
New Section WAC 230-04-119 – Licensing of gambling services suppliers
Amendatory Section WAC 230-04-124 – Licensing of manufacturers, and distributors and gambling services supplier representatives
Amendatory Section WAC 230-04-125 – Distributor or gambling supplier representative license may be reissued when changing distributors or gambling services suppliers
Amendatory Section WAC 230-08-025 – Accounting records to be maintained by distributors, manufacturers and gambling services suppliers
New Section – WAC 230-12-223 – Prohibited practices—Lease and compensation
Amendatory Section WAC 230-12-225 – Repair or services not to be conditioned upon exclusive supply arrangement
Amendatory Section WAC 230-12-300 – Resident agent to be appointed by foreign manufacturers, distributors, gambling services suppliers, and commercial amusement game operators
New Section WAC 230-12-405 – Interest in separate business at different marketing level prohibited
Repealed Section WAC 230-12-220 – Agreement requiring payment by licensee based upon percentage of receipts from authorized activity-Prohibited
Repealed Section WAC 230-30-220 – Interest in separate business involving punchboards and pull tabs at a different marketing level prohibited

Ms. Tellefson said of these ten rules, nine are new or amended rules and one is a repealer. These rules cover the licensing of those who provide services to operators or to Class III casinos. Services such as consulting,

management record keeping, storage or counting are examples of the type of services. She said that in response to Commissioner Forrest's comments last month, it does not include specifically attorneys or accountants. This package sets forth licensing requirements, license fees, and record keeping requirements. One thing to note is this package includes a rule regarding the licensing of distributor representatives and gambling service supplier representatives and it clarifies that a license for either of these becomes void upon a change of employer, in which case the representative must receive a new license from the Commission before beginning new employment. That was an issue that came up in the distributor package, but it has been combined into this particular package and staff recommends further discussion.

Commissioner Herbold referred to item 6A, the August version of the new section, which had a final sentence that said "in no circumstances may a gambling services supplier assume ultimate responsibility for an operator's gambling activity." She said she did not see that in the amended section. She wondered if that had been deleted for a reason. **Ms. Tellefson** said it had been moved to item 6C in section 7.

Commissioner Herbold referred to item 6E in paragraph 1, which read "In the event that a licensed distributor or gambling services supplier representative ceases to represent the distributor," and wondered if it should also say "or gambling services supplier." **Ms. Tellefson** said yes, that was one the staff missed.

Ric Newgard, bingo manager for Seattle Junior Hockey, said he was representing himself and was concerned about the amount of the license fee for the service supplier. He wondered if the \$2,000 license fee was a typographical error or if it were correct. It seemed too high. He said because of the competition in the industry right now, if a bingo manager wanted to become a licensed service supplier and consult with other games that are having a tough time, he would be reluctant to pay \$2,000 to license himself to go help out another game or put himself on the market to consult. With that kind of license fee, he would not know what kind of volume of consulting they feel there is out there. He said if they look at some of the other license fees, such as the manufacturers \$2,000 license fee, they can do up to \$1 million, but there is not that kind of consulting work out there. He is afraid a rule like this might curtail some of the individuals that might be able to help the charitable industry. He said he would like them to take a look at the license fee.

Mr. Bishop said he asked the staff to come up with the fees it would take to cover the regulation. He said these are the fees that they suggested. He said they looked at basing it on gross receipts or their gross sales, but that would require them to receive reports on how many fees they collected so that they could check to see if they were correct. They decided a flat fee would be best. He said they would go back and look at this again.

Commissioner Herbold asked if it made a difference if a person were already licensed as a distributor or an operator and had already paid a fee for that license. **Mr. Bishop** said staff would have to look at the law in the area of bingo managers providing management services, which would be what he thought a consultant would be for another bingo game. He said he thought there might be restrictions in the statute and their other rules regarding that.

Chairman Ludwig asked if further information would be provided on that at the October Commission meeting. **Mr. Bishop** said yes.

HOUSE BANKED CARD GAMES

Amendatory Section WAC 230-04-110 – Licensing of manufacturers

Amendatory Section WAC 230-04-120 – Licensing of distributors

New Section WAC 230-40-900 – Public Card Room Enhancement Program Pilot study and test

Repealed Section WAC 230-40-999 – Public Card Room Enhancement Program Pilot study and test

Ms. Tellefson said these rule are up for further discussion today. She said the package consists of three rules and one repealer. This sets forth the new enhancement program for house banking, implementing the legislation that passed during the last legislative session and it sets up a system whereby the Gambling Commission staff will negotiate contracts with the licensed operators that set forth the internal control requirements, the scope of gaming, all the regulations, basically. This type of contract will be in effect at least up until 1999 or beyond if the Commission deems it appropriate. She said that, after some testimony last month, there was added to this rule

the six month experience requirement. Someone had to have been in the industry for six months, but there is a proviso that the director can waive that based on demonstrable experience.

Commissioner Herbold asked about material in front of her where it says "amendatory section," but then on the back it says "original." She wondered if it were an amendment of something else, but it is the original amendment. She was not sure what it meant. **Ms. Tellefson** said that is a note to the staff in the event there is an amendment to the rule later so they know which one was filed with the code reviser. **Commissioner Herbold** asked if there were an existing 230-04-110, for example, and the changes are as underlined and crossed out and it is their original amendment to the existing rule. **Ms. Tellefson** answered yes.

Chairman Ludwig called for public comment. No one came forward. He reminded the audience that this would be on next month's agenda for discussion in Leavenworth.

PETITION TO AMEND RAFFLE RULES

Ms. Tellefson said it is a petition submitted by James Williams. She said staff does not object to the filing and asked Mr. Williams to come up and explain his petition.

Chairman Ludwig said that he did not know if the petitioner heard what Director Miller had said, but that he understood his petition and he thought that the others did and suggested he proceed and if he could keep his comments short due to the fact that it was just a decision of whether or not to file.

James Williams, petitioner, said he works for a number of fund raising organizations that like the idea of having one free ticket based on a scheme that if the tickets are a dollar that they might sell five tickets for four or if they are five dollars, or they might sell four for \$15. He said it is a marketing method. It is effective and he said Washington sold one free Quinto ticket for five lotto tickets, so it must be somewhat effective. He said he realized there is an accounting method. He said it would be nice if an accounting method was not needed, but it is necessary. He said that he thinks that if the organizations do not want to support the accounting method, then it is not necessary for them to use the method to sell the raffle tickets with one free ticket. They can choose to support the accounting or not. If cost is a factor of the raffle ticket itself, they found that since raffle tickets have gone to \$25, they use that effectively in their members-only functions. Most raffle tickets he is familiar with sell for only around the \$5 or \$10 or \$1. So if the cost is an issue, then they could look at lowering the cost of the raffle ticket and using it as this method.

Chairman Ludwig noted that someone in his hometown asked him why they cannot sell raffle tickets with a discount or as your petition proposed because, he said, they did it with the lottery. They sometimes confuse the Gambling Commission with the lottery. **Mr. Williams** said he points that out and it is just noted that it is an effective marketing tool.

Commissioner McLaughlin moved to file this petition. **Commissioner Herbold** seconded the motion. *Vote taken; motion carried with four aye votes.*

PETITION TO AMEND PUNCHBOARD/ PULL TAB RULES

Dennis Zaborac, petitioner, said the intent of this petition is to raise a few questions for discussion in regard to this policy of marking up merchandize costs by 50 percent. Since this rule was enacted in 1975, there have been a lot of changes in the industry and he thinks the time has come to evaluate the appropriateness of this rule under today's market conditions. When enacted, they were dealing with a 25-cent ticket, 4,000-count games and a maximum prize of \$100 to \$200. This 50 percent amounted to about \$100. Today they have \$1 tickets, they have 12,500-count games and a top prize of \$500 or so, which means this 50 percent could be well in excess of \$1,000 now. It is his understanding that this 50 percent is allowed either as a mark-up to a wholesale price or a handling charge. If it is a handling charge, there is no justification for an increase in compensation because they have not increased the handling of the product. It doesn't take any more time today to put in a game eight

expensive Seahawks jackets than it took to put in eight toasters in 1975. If they are talking wholesale prices, his customers are not seeing it. They will go to Costco to buy merchandise because they can get it cheaper than they can from the distributor. He does not see these distributors selling any of this merchandise to a bona fide retailer who marks it up 50 percent and puts it on his shelves. The question is why the public pull tab player is being deprived of one-third of the prizes by paying out only 40 percent on merchandise games. He said he did not think the pull tab players realize these games pay out 40 percent and for that reason they are not here to ask this question, but he thinks it is a question that should be asked.

Director Miller said the staff has no objection to filing for further discussion.

Commissioner Herbold moved to file this for further discussion; **Commissioner Forrest** seconded the motion. *Vote taken; motion carried with three affirmative votes. Commissioner McLaughlin abstained from voting.*

LICENSE FEE INCREASE RULES

Ms. Tellefson said these three rules are up for filing for further discussion today. They increase the license fees consistent with the budget proposal that the agency put forward for this biennium and in accordance with the limitations set forth in Initiative 601, which is a 4.05 percent license fee increase. The staff is asking for filing for further discussion.

Chairman Ludwig wanted to know if there was something in this proposal that had to do with the time frame for the implementation of the new fees. **Commissioner Forrest** said they could reduce it later on when they get more complete figures. **Ms. Tellefson** said typically rules become effective January and July and with discussions with the Deputy Director and executive management, the proposal would probably be when it comes up for adoption that the rules be implemented June 30th of next year.

Commissioner Forrest said they were all inflationary within the scope of the rule. He wondered if there were any policy changes in any of these or any change within them, or are they pretty much routine upgrade. **Ms. Tellefson** said they were routine.

Chairman Ludwig said it was his understanding that if this isn't filed and isn't eventually discussed or adopted, they could be in a bind because of Initiative 601. **Ms. Tellefson** said that then their base for the following biennium is limited.

Commissioner Forrest moved that item 10 A, B and C be filed for further discussion. **Commissioner McLaughlin** seconded the motion. *Vote taken; motion carried with four aye votes.*

NEW DIRECTOR'S SALARY

Chairman Ludwig said that the Commission has appointed Ben Bishop as the new Director but has yet to discuss his salary in executive session. He asked Mr. McCoy about the appropriateness of postponing setting the amount of salary until October. In that case, there may be a retroactive increase in salary, which is prohibited, but if they had a motion today to set the salary in October effective October 1, he wondered if that would be permissible. **Mr. McCoy** said he believed that was correct. He has not looked at the issue for sure.

Chairman Ludwig wondered if they could forego an executive session today and think on it because they had not thought about this, even though the issue was presented to them by correspondence and he would entertain a motion that whatever they decide at the next meeting be effective as of October 1,

Commissioner Forrest said he so moved. **Commissioner McLaughlin** seconded it. *Vote taken; motion carried with four aye votes.*

COMMENTS FROM PUBLIC OR PUBLIC OFFICIALS OR BOTH/GENERAL DISCUSSION

FAREWELL TO DIRECTOR MILLER

John Beadle, Washington Charitable and Civic Gaming Association, said they would like to go on public record acknowledging the fine accomplishments that Frank Miller has done to assist the nonprofits in this state for the past 11 years. He has established a dialogue with the nonprofits and the members of their Association join him in expressing their heartfelt thanks that their organizations are able to remain prosperous, to allow them to have new marketing techniques within the statutory authority. They always knew that he was straight arrow with them. He gave them the right information – they didn't get everything they wanted, but they never expected to – he established a dialogue that gave them the opportunity to discuss their needs and assist them through the Legislature, through the Office of the Governor and in many areas that they have relied on Director Miller. He has always come through for them. Along these lines, they wanted to present him with just a little gift and they would mark it up 50 percent while it is still allowed. In determining what gift to give him to remember them and for them to remember him what he has done for them, they asked some of his friends what his hobbies were and so forth and they did find out one thing. They said he had a Trojan cruiser and he likes to cruise around and doesn't get much opportunity with the demands of the Director of the Gambling Commission, but he cruises around. But each and every person always had one comment at the end, that he always gets lost. He can't find Hidden Harbor and he never knows where his home is, so along those lines they thought they could find something apropos for a gift. With that, he presented Director Miller with something to help him with his future journeys and he read from the outside of the box: "Frank Miller, 1986-1997, Director, Washington State Gambling Commission. Thank you for your outstanding leadership and support of nonprofits in Washington State, WCCGA." **Director Miller** said it is wasn't a flashlight. It is a Global PS – he said he won't get lost anymore. He said that the gift was great, that he was actually going to get one for himself soon and thanked them for their thoughtfulness.

Brian Acuff, Accutab Gaming Supply, said he wanted to echo what was said by the WCCGA. He said that Director Miller has been one of the better public policy people trying to take an industry like this, which is at times in disarray, and he builds a consensus based on what he has to do as a director working with distributor groups, games and manufacturers. This is at times very difficult, but he has done an extraordinary job of taking all of those differing opinions and desires and has done just a wonderful job and from the distributors side of it he wanted to say he had done a great job.

Lyn Melby, executive director of the Washington State Federation of Clubs, said Director Miller is the third director that he had the pleasure of working with and he has been very accessible, very creative and helping to solve problems. He is responsive, he is respectful of the people who is regulating and he is serious about his charge under the law and sometimes a little too serious, so he hopes he gets a life now after he is done with this. He said a person can be judged by the company he keeps and he thinks Director Miller has done a marvelous job of assembling a team that he is leaving here and is leaving in Deputy Director Bishop's good hands.

Bob Tull, on behalf of the retired commissioners alumni association, of which former commission Ann Noel was also in attendance earlier, but she had to leave. He said it was wonderful to serve with Director Miller in different capacities. He said everything good that has been said about Director Miller is true and said he did an outstanding job and had a profound effect upon the course of the agency and that effect will be felt in a positive way for decades to come and it was a pleasure to serve with him.

Vito Chiechi said he is representing the Washington State Licensed Beverage Association and the Recreational Gaming Association. They honored Director Miller last night and jabbed him quite a bit about his leaving. Now he wanted to say how much he appreciated him, even though they had many fights along the way, they were always congenial and they always knew that they could come back to him and make sure that they had his ear. Even though there were times he didn't listen, they still appreciated the battle they went through. He wished Director Miller good luck. **Director Miller** wanted to know why TVW was not there and was informed that they were supposed to be.

Doreen Maloney, Upper Skagit Tribe, said there is a celebration next week at Jamestown Tribe to show the respect and honor the tribes feel for Director Miller. She said it had not been an easy road, but to be able to deal

with the hard issues and to agree to disagree makes it difficult that a person like this is leaving the position. They wish Director Miller well and they know the agency is being left in competent hands with Deputy Director Bishop. On behalf of all the tribes, it has been a pleasure working with him. She said that she thought that the industry, whether it is tribal gaming or any gaming in this state, he had furthered that for all of them and she thanked him.

Marco Courones, American Pull Tab, said that on behalf of a lot of distributors, they have disagreed many times but Director Miller had always given them his audience and while he and his crew were on their watch, they took care of the industry. He said they would miss him.

Don Bush, who runs the Upper Skagit Casino and works for Harris and they have 16 casinos around the country and in eight different jurisdictions. He said when he goes to other states he hears about the horror stories about how they have to work with their state commissions and the people in them and they can't believe what a treat they have in Washington and he thinks that is a great testimony to a lot of people here but in particular Director Miller has been a straight shooter since the day they came to the state and there are a lot of people who envy him that he has the opportunity to work with this group and not have to work with their groups. He thanked Director Miller and said they had a treat for him at the end of the week.

Chairman Ludwig said it is customary to present those who are retiring with their badge. He said they had a plaque with Director Miller's badge on it, which he would present to him today. He said that former-commissioner Bob Tull could give more of a history than he can because he's not been with the agency long, but he has seen enough of state government and local government and state agencies to know that the Gambling Commission is unlike any other state agency that he has ever been aware of. That is in part due to the direction that it has been heading for many years now under Director Miller's administration. He first heard about regulatory reform, negotiated rule making, and pilot plan rule making in the Legislature seven years ago. When he joined the Commission he found that the Gambling Commission had been doing that long before the Legislature was talking about it. He said it was that kind of foresight and innovation that had brought the Gambling Commission to its present level and prompted the comments they heard this morning. That is just one of the things that Director Miller has done to create an agency that met and solved the problems it was faced with. Another obvious plus is the executive staff that he assembled and he put together to run the agency. That staff will still be here without his help, but because of his efforts in doing that, he thinks the Gambling Commission is in a position to continue to meet the problems and the challenges. During his administration, he has had things to deal with that no other director had. For instance, negotiating the tribal compacts in a way that they still believe has helped the tribes and will continue to help the tribes and the state of Washington generally. At the same time, he has always focused on being able to have accomplished that and still maintain a market place for charities and commercial licensees, which they are still working on that. Within the state of Washington, Director Miller has created what he thinks is a unique state agency and as he understands and believes the Washington State Gambling Commission is recognized nationwide by being truly a model state agency, particularly one that knows how to regulate this industry and how it can be done in a real professional manner. He then presented Director Miller with a plaque thanking him for leaving a state agency in the shape that he has, so that it will continue to serve the people and the industry of this state.

Commissioner McLaughlin said that when the word got out in Snohomish County that she was going to serve on the Gambling Commission, she started to get references about Frank Miller and she thought he must be something else. She said that there is one curmudgeon in Snohomish County that rarely says anything nice about anybody, but he just sang Frank Miller's praises, and that person is Jack Sharen. She said she knew that he would have liked to have been here today because he thinks so highly of Director Miller. He wasn't saying anything that wasn't true.

Director Miller said most everything was said last night and yesterday. He thanked the commissioners, senators, and former commissioners who gave him the opportunity to run the agency. He said he has been blessed and had the greatest job in the world to have the opportunity to make a change to the culture and try to build relationships with the industry based on respect and not fear. He said he feels they have been very successful and he leaves feeling at peace that he did what he could do and that it was time to move on. He is happy for his colleague and friend who is taking over. He hopes they give him the same respect that they have given him because he deserves it. He thanks everyone for the opportunity and he knows it will be hard to top this experience professionally. The ability they have to have dialogue, the study group sessions, the work that

members of his executive team have done and the tireless work. When he first started, they had one woman in the top 30 positions and now there are 17 and he thinks they are balanced, and fair and representative. They have tried hard to make this a representative agency. He is proud of that. He is not going to miss the personnel issues such as firing people, being sued for every time he does something wrong. He will miss all of the staff, the commissioners and the people because it has been a wonderful experience and he thanked them for everything and wished them the best in their future.

Chairman Ludwig asked if there were any further business for the Commission.

Public meeting adjourned.

NOTE: THESE PRINTED MINUTES PLUS THE TAPES CONSTITUTE THE FULL MINUTES.

Susan D. Green
Executive Assistant

